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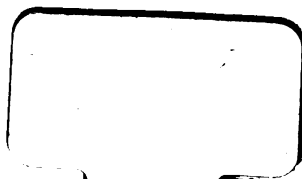
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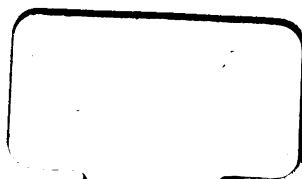




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# HEARINGS

BEFORE THE

U.S.  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

779  
183

## ON THE BILLS 17824 AND 19956

RELATING TO ADULTERATED PAINT,  
TURPENTINE, AND LINSEED OIL



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## RELATING TO ADULTERATED PAINT, TURPENTINE, AND LINSEED OIL.

PREVENTION OF SALE OR TRANSPORTATION OF ADULTERATED AND  
UNLABELED PAINTS, ETC.

H. R. 17824.

### STATEMENT OF HON. THOMAS F. MARSHALL, A REPRESENTA- TIVE FROM THE STATE OF NORTH DAKOTA.

Mr. MARSHALL. If I may have a moment, Mr. Chairman, I will say that I introduced a bill of this character a year ago, at the close of the session, too late to ask for a hearing. I did it for the purpose of giving the matter publicity and drawing out criticisms with respect to the subject-matter. Since that time I have considered the matter very carefully, and I have to offer a thoroughly digested bill on that subject, prepared after consulting with the representatives on the legislative committees of the paint manufacturers, and also decorators, painters, and users in general, also with some of the editors of the magazines, who are familiar with the subject, and the author of the North Dakota paint law, which has been sustained by the Supreme Court, as well as with the Department at Washington, with a view of getting the bill strictly in line with the pure-food legislation. I would like to have a hearing set by the committee at not too close a date, because I will have to call in people from a long distance, among them Professor Ladd, who, I believe, knows more about paint than anybody else in the United States. About the 10th of the coming month would be satisfactory, and I think I could get my people here then. I would of course be glad if you would fix two days, but of course if we can get only one that will be all we can have.

The CHAIRMAN. Very well; we will take that up later.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Tuesday, April 7, 1908.*

The committee was called to order at 10.30 a. m., Hon. Irving C. Wanger in the chair.

PREVENTION OF MANUFACTURE, SALE, OR TRANSPORTATION OF ADUL-  
TERATED PAINTS.

H. R. 17824.

### STATEMENT OF HON. THOMAS F. MARSHALL, A REPRESENTA- TIVE OF THE STATE OF NORTH DAKOTA.

Mr. WANGER. This meeting is called for the purpose of a hearing upon H. R. 17824 for preventing the manufacture, sale, or transportation of adulterated or unlabeled paint, turpentine, or linseed oil. You may proceed, Mr. Marshall.

Mr. MARSHALL. There has been some little informal discussion here as to giving the opposition an opportunity to be heard, and I wish to say in that connection that so far as I am concerned, and the other friends of the measure as well, we shall be only too glad that all the time possible may be given for everybody to be heard on this proposition. There is no disposition to shut off the hearings, so far as the friends of the measure are concerned.

As author of H. R. 17824, I desire to submit to this committee a brief statement preliminary to the hearing of those who will treat the subject more or less from a technical standpoint.

The measure is framed strictly along the lines of the pure-food law; its execution would be by the same officials, and it would operate in practically the same way.

It covers the manufacture of paint in any Territory or the District of Columbia, and any paint that enters into interstate or foreign commerce, providing penalties for the adulteration or mislabeling of any such paints.

It is by no means a "pure-paint bill"—that is, it does not undertake to define what shall or shall not be pure paint; it is intended to be an "honest-paint law."

Reduced to its final analysis, this bill simply provides that paints shall be labeled so as to show the genuine constituents, and the proportions of each, leaving it largely to the purchasers to inform themselves as to the merits of the paint when advised as to its constituents.

A large proportion of the paints now in use are known as "ready mixed," which are sold by the gallon in sealed packages. While many brands of these paints are made up of honest materials, properly combined, and sold at full weight, there are numerous brands that are fraudulent, resulting in enormous profit to the manufacturer and consequent loss and serious inconvenience to the consumer. The frauds are not all confined to ready-mixed paints.

I do not deem it necessary to enlarge on this feature of the subject, for proof is everywhere at hand of the inferior quality of many of the paints, and I presume there is not a member of this committee who is not well aware of this fact.

It is the intent of this bill to provide for a workable law which will, on the one hand, protect the people against inferior paints, and at the same time work no injury to honest manufacturers. As a matter of fact, proper legislation ought to be a help rather than a hindrance to a manufacturer who is willing to make honest goods and sell them in an honest way.

The measure has been prepared with great care and with the assistance of Professor Ladd, pure food commissioner of the State of North Dakota, author of the North Dakota pure-paint law, recently sustained by the Supreme Court of the United States. I doubt if any man in the United States has a wider knowledge of the subject than Professor Ladd. In addition to this the Bureau of Chemistry has been consulted at all times, and the views of many paint manufacturers and users of paint have been considered.

The measure may, of course, be defective in some details, but the principles involved in the bill are along right lines, and should be retained.

The North Dakota law, to which I have referred, is a strictly pure-paint law, defining absolutely what is pure paint, and there will

doubtless be those who will feel that this bill should have been along precisely the same line, but in a spirit of concession the friends of the measure and I have felt that it would be wiser to offer a less drastic measure, which, while possibly not affording the absolute protection to purchasers to which they are entitled, would be a vast improvement over present conditions. There are those, of course, who will appear before you who will object to one and another of the provisions of this bill, and others who want no legislation.

Section 1 provides that it shall be unlawful to manufacture within any Territory or the District of Columbia any paint, turpentine, or linseed oil adulterated or unlabeled within the meaning of this act, and provides the penalty therefor.

Section 2 makes it unlawful to introduce into any State or Territory or the District of Columbia from any other State, Territory, or the District of Columbia, or from any foreign country, or shipment to any foreign country of any paint, turpentine, or linseed oil adulterated or unlabeled within the meaning of this bill, provided that no article shall be deemed adulterated or required to be labeled within the provisions of this act when intended for exportation to foreign countries, when not in conflict with the laws of such countries; provided, further, that nothing shall prohibit the manufacture of paint upon a written contract with a consumer for use in his own manufacture, and not to be sold.

Sections 3, 4, and 5 are administrative.

Section 6 defines paint, linseed oil, and turpentine.

Section 7 sets forth when the article shall be deemed adulterated.

Section 8 relates to label.

Section 9 provides that no dealer shall be prosecuted who can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States.

Sections 10, 11, and 12 are administrative.

Section 13 provides that the act shall be in force and effect six months from the date of its passage and approval.

I will read the provisions of sections 6, 7, and 8 as they appear in the bill.

(Reads:)

SEC. 6. The term "paint" as used in this act shall include all pigments, dry or in any kind of oil, or any substance or compound used or intended for use in paint, paste or semipaste paint, and liquid or mixed paint ready for use. The product "linseed oil" is defined to be the oil obtained from seeds of the flax plant, *Linum usitatissimum*, Linnaeus. The product "turpentine" is defined to be the light oil obtained from coniferous trees.

SEC. 7. That for the purpose of this act an article shall be deemed to be adulterated—

(a) If any substance be present, other than those mentioned on the label, which cheapens or debases its character or increases its weight or volume without a corresponding increase in value.

(b) If any of the materials contained in the article be of inferior quality.

(c) If any substance has been substituted in whole or in part for any ingredient claimed to be present.

SEC. 8. That there shall be shown clearly and distinctly upon the face of the label and in the English language—

(a) The name and residence of the manufacturer of the paint, or of the distributor thereof, or of the party for whom the same is manufactured.

(b) There shall be shown in case of dry colors, colors ground in oil, paste or semipaste paint the true net weight, and in all ready-mixed or ready-for-use paints the true measure in gallons or part thereof.

(c) There shall be shown the name and, with substantial accuracy, the percentage of each ingredient, both solid and liquid, contained therein.

(d) When other than chemically pure colors are used the percentage composition thereof shall also be shown, or when varnish, Japan, or other driers are used, the composition of the same shall be shown.

That for the purposes of this act an article shall also be deemed to be improperly labeled—

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement on the label of the quantity or proportion of each ingredient contained therein.

Third. If in package form and the contents are not stated plainly and correctly in terms of net weight or measure on the outside of the package.

Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular.

There is another feature which permits a manufacturer to enter into a contract with a consumer to make for him under a special formula any paint for his special use on articles of his own manufacture, but not to be sold.

Mr. MANN. Is that the proviso in section 2?

Mr. MARSHALL. Yes; and we have put that in because many manufacturers desire to use special colors of paint made under special formulas; it becomes a sort of a trade mark and there are certain restrictions in regard to it. There can be no possible objection to it.

Mr. MANN. What does the last proviso of section 2 mean?

Mr. MARSHALL. That paint made under contract, and under a special formula, shall not be sold.

Mr. MANN. How can we control that? We can not say what shall be done with it after it gets into a State?

Mr. MARSHALL. The object of that proviso was simply not to permit it to get into trade. For instance, here is a manufacturer who wants a certain paint made under a special formula that probably nobody else would want, and he simply contracts with the paint manufacturer to make it for him, and the proviso here is intended to confine it to his own use. Personally, I do not think it is necessary, but—

Mr. MANN. But it is in the bill. Under your bill a manufacturer in Illinois can order paint made according to a formula in Indiana and have it shipped to Illinois. Then your proviso says that the man in Illinois having obtained the paint made under this formula can not use it upon certain things and can not sell it. Is that the purport of that proviso?

Mr. MARSHALL. The intention is to confine it to his own use.

Mr. MANN. That is plainly unconstitutional; there is no question about that.

Mr. MARSHALL. Well, I am not a lawyer, and I can not argue that question with you.

Mr. BARTLETT. The State should have a little to say with reference to pure food laws—

Mr. MARSHALL. And I want to say that North Dakota has led off in the enactment of pure food laws.

Mr. RICHARDSON. But as I understand your bill it is to prevent a fraud, though you are trying, according to this last proviso in section 2, to prevent some one from selling that which is not a fraud, but a genuine article.

Mr. MARSHALL. Personally I do not think the last proviso in that section is necessary.

Mr. RICHARDSON. That would have to go out.

Mr. MANN. Have you examined the so-called Dalzell bill, H. R. 19956?

Mr. MARSHALL. I have the Dalzell bill, but I do not feel competent to speak of the differences between the two bills.

Mr. MANN. I have not examined the bill, but I thought probably you could tell from your standpoint the differences?

Mr. MARSHALL. I believe there are more distinctions than differences. I know something about where the differences come in, but I am in hopes there will be a way of arriving at an understanding whereby many of the objections in my measure can be met; that is, I think some gentlemen feel that this measure of mine is intended to be more drastic than it is intended to be; I think they are more scared at the words than the real meaning of the bill.

Mr. MANN. Do you know whether the Bureau of Chemistry, the Supervising Architect's Office, or the Bureau of Standards of the Government have made any examination of these paints to ascertain whether they are adulterated?

Mr. MARSHALL. I think not, but I do know that our pure food commissioner and State chemist, Professor Ladd, of the Agricultural College of North Dakota, has made a very extensive investigation of paints, and is now carrying on very extensive experiments in the use of paints, subjecting them to all sorts of tests.

I will further say that our State law has been tried out in the Supreme Court, and there is an abundance of very strong evidence to the effect that paints have been and are being adulterated.

Mr. MANN. I would advise you to communicate with Doctor Stratton, the Chief of the Bureau of Standards, who has been making an examination of paint for the Light-House Board during the last year or so, and who has found that nearly all of the paints furnished to the Light-House Board, for which we have paid very high prices, were grossly adulterated. I think it would be a very wise thing to bring him before this committee.

Mr. MARSHALL. I think there is no doubt about that, but I do not myself claim to have any technical knowledge upon this subject.

Mr. KENNEDY. This bill does not require that paint shall be made out of certain materials, does not make a standard?

Mr. MARSHALL. No; it does not make a standard. It does not say what shall be pure paint or shall not be pure paint, and when reduced to its lowest terms it simply provides that all paints shall be labeled to plainly tell what they are made of.

Mr. BARTLETT. But suppose the State of Georgia, say, should say that the paint shall be labeled in a different way, then which law shall prevail?

Mr. MARSHALL. I am no lawyer and would not undertake to answer that. Perhaps you know.

Mr. MANN. You say that this bill makes no standard. I think you are not quite correct in that.

Mr. MARSHALL. It goes far enough to make the work of labeling paints absolutely effective.



Mr. RICHARDSON. This bill does not pretend to prevent or prohibit a State from making any law it pleases on the subject of manufacture or sale or anything else?

Mr. MANN. It is provided by section 2 that the introduction into any State of adulterated or unlabeled paint is prohibited, and then in section 7 there is defined what are adulterations. Of course, to that extent you fix the standard.

Mr. MARSHALL. Well, in discussing the proposition, we have to go that far in order to—

Mr. MANN. I understand; but to that extent you do fix the standard, because you prohibit the transportation of adulterated paint, and then you define what adulteration is.

Mr. MARSHALL. But our definition is so broad and liberal—

Mr. MANN. Yes, I am not arguing that; I don't know anything about that, and that is what we want information on. But you fix the standard of adulteration, and then prohibit the transportation of adulterated paint. Your standard is fixed in this way, quoting from the bill:

(a) If any substance be present, other than those mentioned on the label, which cheapens or debases its character or increases its weight or volume without a corresponding increase in value—

That is a very indefinite fixing of standard.

Mr. MANN. And you say, quoting from the bill:

(b) If any of the materials contained in the article be of inferior quality—

that is, if you mix two things they must be of equal quality or else your paint is adulterated. If the pigment and the oil are not of equal qualities, then there is an adulteration under that definition.

Mr. BARTLETT. Will you allow me to inquire if the Supreme Court of the United States has not passed upon the North Dakota paint law?

Mr. MARSHALL. Yes; the Supreme Court has passed upon the pure-paint law of North Dakota, and it is a very drastic law.

Mr. BARTLETT. And upheld it?

Mr. MARSHALL. And upheld it absolutely.

Mr. RICHARDSON. Do you say that you haven't any standards provided for in this bill?

Mr. MARSHALL. Practically not.

Mr. RICHARDSON. I think that is one of the great defects in the bill.

Mr. MARSHALL. I am perfectly willing to have them put in. Personally I would not object to an amendment to that effect.

Mr. RICHARDSON. You do not follow the pure food bill at all in that respect. That bill does not invade any of the rights of a State, but cooperates with the State, and makes the operations of the law more efficient. I think you have left it very uncertain.

Mr. MARSHALL. I agree with you that that should be the law, but I am trying to do something that seems possible.

Mr. RICHARDSON. If that ought to be the law then it ought to be in the bill which you recommend.

Mr. MARSHALL. As I said before, I would be very glad to see it amended now in that respect.

Mr. SHERMAN (Acting Chairman). As I understand it, Mr. Marshall, the State expert of North Dakota is here and desires to be heard next.

Mr. MARSHALL. I think it would be well to lay a little foundation for our legislation, and if the committee desires to hear him now, very well.

**STATEMENT OF PROF. E. F. LADD, PURE FOOD COMMISSIONER OF NORTH DAKOTA.**

Professor LADD. I would say to the committee that we found, after an examination of a majority of the paints sold in North Dakota, that they were both adulterated and misbranded, adulterated in the sense that they represented themselves as being something else; that the products which were sold as containing white lead sometimes contained no white lead whatever, and that the mixed paints, with their constituents labeled as white lead and zinc oxide, did not contain such, and also that paint which had a high standard contained as much as 20 to 24 per cent of water in the liquid portion. We found that the department stores, the catalogue houses, and those manufacturers of cheap paints were coming into the State and flooding it by underselling the good paint, injuring the work of the State and the protection of the building themselves. And so North Dakota undertook to regulate the sale of paint in the State, but they have gone much further than Congressman Marshall has gone in his bill. They have established a standard, and have said that paint of a certain standard need not be labeled, but all other paint must show every ingredient contained in the same, and the law under which that has been done has been sustained by the Supreme Court of the United States. We can enforce that law in North Dakota so far as the products of the State are concerned, and I come here representing the consumer, in whom I am interested, and also as an officer of the State, whose duty it has been to enforce the pure food and paint laws of North Dakota.

In attempting to enforce those laws we have found that we can not reach the catalogue houses and those manufacturers who are making a spurious paint. Sometimes the paint is of such a character that after a few months' time it will completely peel off. That character of paint is shipped into the State directly to the consumer, and we can not reach the regulation of it. A national law would regulate that fault, and enable us to cooperate with the national authorities in the regulation and sale of that class of paints in the States.

As showing you what the character of those paints is, I will hand around a photograph taken nine months after a paint was put on a house, and was a paint handled by one of the catalogue houses.

Mr. RICHARDSON. Please explain what that document is.

Professor LADD. It is an address made by myself upon paint legislation before the Association of Testing Engineers of the United States. I also have here a bulletin which shows the analyses, which is the official document from the North Dakota experiment station, showing the results of our investigations in that State.

Mr. HUBBARD. Have you copies of the North Dakota law?

Professor LADD. Yes.

Mr. HUBBARD. Is it contained in the same bulletin?

Professor LADD. It is not contained in the same bulletin, but this bulletin contains the North Dakota law.

Mr. WANGER. Please give those to the stenographer in order that they may appear in connection with your statement.

Mr. RICHARDSON. Then the difficulty is that when you get outside of the effect of the North Dakota law into other States, you get into trouble?

Professor LADD. Yes, sir. A great many manufacturers endeavor to construe that meaning so far as method of labeling is concerned, and it is very important that the paints shall be truthfully labeled. Sometimes the labels of the paints on the market are as evasive as they can be. For instance, they will say that "this is barium sulphate," but it is quite different in value as a paint whether it is a precipitated barium sulphate or a ground-up stone—barytes. It is also quite different whether it is precipitated calcium carbonate or marble dust or chalk.

Mr. ESCH. You use those technical terms, but I would like to ask how much of that information would be of advantage to a consumer?

Professor LADD. It would be no information, as some of the paint men would give the analysis, but we hope that the public will become more educated and come to a better understanding of what the labels should show as to the names of the "ingredients," such names as barytes, white lead, sublimed lead, lead, chalk, and marble—if they put those in, together with water—

Mr. MANN. Do they put in much chalk or marble?

Professor LADD. According to our analyses, there is a great deal of it.

Mr. MANN. What value is that to the paint?

Professor LADD. I would not attempt to say. We have a paint, a photograph of which I am passing around, that is made of that class of material, and in nine months the paint scales off, and at the end of a little more than a year there is practically no paint on that section whatever.

Mr. MANN. Because of the chalk and marble, or on account of the oil? What effect does chalk or marble have?

Professor LADD. I would not attempt to say, because the combined effects might be different from the—

Mr. MANN. If you do not know, Professor, whether the paint is good or not, how would an ordinary purchaser know anything about it?

Professor LADD. We would not attempt to decide—my idea is this, that when you label it and show what there is in there, and show the names of the ingredients, then the public will become educated the same as it has in food matters in our State, and select a paint upon their experience, taking that paint which will give the best results.

Mr. MANN. I have asked you what chalk and marble do, how they act. You can not tell, and I would ask you how an ordinary purchaser can tell? What good does it do to put this formula on the can?

Professor LADD. When you have made a paint of pure white lead there would be no chance for this kind of a fraud.

Mr. RICHARDSON. Under the North Dakota law, as I understand it, a man puts a label upon the paint can, and I would like to ask who is authorized under that law to say that that label is truthful?

Professor LADD. It is the duty of the food commissioner of the State; the duty of the experiment station to appoint an agent whose duty it is to see that the law is enforced.

Mr. RICHARDSON. Do you know of examinations made upon this subject?

Professor LADD. I do.

Mr. RICHARDSON. Have you found anybody practicing fraud?

Professor LADD. In 90 per cent of the examinations there was fraud either in the label or in the name of the constituents entering into the products.

Mr. KENNEDY. I am afraid that your answer, that you do not know of what use chalk and marble are, is a little misstatement of what you intend. You did not mean to express an opinion that those constituents are as good as white lead?

Professor LADD. No; I would rather leave that for others to decide. When you buy a product and suppose that you are buying white lead and you get chalk, you have a product that chemically has a different value with regard to wearing. I do not care to say anything further or to enter into any controversy in regard to these things at this time.

Mr. HUBBARD. Are you able, under the law of North Dakota, to completely protect the purchaser in that State?

Professor LADD. No.

Mr. HUBBARD. For what reason?

Professor LADD. For the reason that the catalogue houses and the manufacturers of low-grade paints ship directly to the consumer in this way, and we are not able to reach that class of paint.

Mr. HUBBARD. But so far as the purchaser may buy from the regular dealer, you can protect him under the North Dakota law?

Professor LADD. Yes; and we do protect him. Every can of paint, so far as I am aware, is labeled.

Mr. RICHARDSON. You want to get a law through Congress that will prevent the men on the outside from sending that paint in, and create a standard on the part of the Government so as to allow the States to cooperate with the Government and have a uniformity in the value of paints?

Professor LADD. Yes; but we do not attempt to create a standard here in this bill. The North Dakota law, however, creates a standard.

Mr. RICHARDSON. And that is where I think you fall down.

Professor LADD. My idea is that there should be a standard, but I believe if you can not get a whole loaf you had better take two-thirds of it.

Mr. RICHARDSON. But standards are provided in the pure-food law.

Professor LADD. The paint manufacturers of the country, through my coming in contact with them, have led me to believe that my views do not harmonize with theirs, and I have therefore stated my views in this way, that if every paint is labeled with its true composition then the public will be educated to understand what the constituents are. On the other hand, if we establish a standard then you can go in and select a paint which is not labeled and get a good one.

Mr. RICHARDSON. Do you not think that the best way to educate the public is to punish a man who violates a law?

Professor LADD. Yes, sir.

Mr. ADAMSON. All you ask is that the label shall indicate what the contents are, and that the contents shall come up to the description?

Professor LADD. Yes, sir.

Mr. RYAN. If a can has a label on it stating that the paint is composed of white lead and zinc, but instead the manufacturers have put in chalk, then the purchaser is cheated, because chalk is a much cheaper constituent?

Professor LADD. Much cheaper, and in the view of the consumer, some believe that it is not of the same wearing value.

Mr. RYAN. So that as to the question of value he is selling something of less value than represented?

Professor LADD. Yes; only worth a fraction of a cent, while he is paying 7 or 8 cents for it.

Mr. ADAMSON. That is, chalk is not so valuable when mixed in paint as is white lead?

Professor LADD. Not in my judgment.

Mr. ADAMSON. Is it of any account at all for that purpose?

Professor LADD. Some claim that it is and others that it is not. When my experiments are finished, in a few years time, I will be better able to judge.

Mr. ESCH. Would the placing of the names of the ingredients on a package disclose the formula?

Professor LADD. Not necessarily at all.

Mr. RUSSELL. Do you know what proportion is shipped in your State from the catalogue houses, and direct to the consumer?

Professor LADD. The amount shipped by the catalogue houses at the present time is small compared to what it was two years ago. We have not got the public educated up yet, but I should say that in the rural sections pretty nearly one-fourth of the paint two years ago was bought through department stores and catalogue houses.

Mr. RUSSELL. Will not they become educated by seeing that the paint is more durable, lasting, and better than the paint received from the catalogue houses?

Professor LADD. A man buys a cheap paint, puts it on his house, and at the end of six months or a year it begins to peel off. He then decides that he will buy a good paint and put it on over that paint, but his good paint will not stay on, and then he says that the new paint is no better than the old paint, and he does not know where the difference lies.

Mr. ADAMSON. I have noticed in a good many country papers that there is an advertising device resorted to in making great claims in regard to certain paint companies. I suppose that is an indication of the kind of business you are referring to?

Professor LADD. Yes; I published the names of some of those men, and their advertisement, together with what they claim, and what, by the analyses, has been found in the paint.

Mr. RICHARDSON. In our section of the country there is a man by the name of Devoe who has addressed a letter to prominent men all through that section, and which has been published in the newspapers. Is he one of them?

Professor LADD. I do not know the workings of all of them, but I refer to Chase, Parker, and the Weir White Lead Company as being those who advertise very extensively in some of the leading journals and whose paints did not agree with what they claimed in their advertisements. They state that the white lead contained in their paint is produced by the Dutch process of corroding, but when you come to analyze the paint there is not any white lead in it.

Mr. ADAMSON. When you see one of those paints advertised, it is a good idea to keep away from it?

Professor LADD. That is true.

Mr. RYAN. I see by reference to this report of the North Dakota Agricultural College, station No. 126, that reference is made to "United States white lead is good white lead;" then it states that after the analysis the product was shown to be 12 per cent short in weight, and the statement is made that the United States white lead contains no white lead whatever, and to call it white lead is, to say the least, a misnomer.

Professor LADD. Yes.

Mr. ADAMSON. I would like to ask you this question: Is there any better way to get an economical paint than to get the best white lead, mix it with oil, and put it on?

Professor LADD. I am afraid you will get me in trouble in time. There are differences of opinion on that, but I have my own opinion.

Mr. MANN. Then why do you not give us your own opinion? What are you here for if it is not to give us your opinion?

Professor LADD. I have been a buyer of mixed paints and have used them on my own house. The first paint used did splendidly, but the second time, on repainting my house with the same manufacturer's paint, it proved inferior; and I think that sometimes a paint that is put on the first time will show well, and that that particular kind of paint does not leave a good surface, or a good condition, for the next paint, and you blame the next paint.

Mr. MANN. But you appear as an expert on paints, do you not?

Professor LADD. With regard to the analysis of paints.

Mr. MANN. Is your opinion based only upon the fact that you have used paint on your own house, the same as millions of other men have?

Professor LADD. No, sir. We have carried on a large series of experiments during the past year, and we have made many tests of paint during the last two years, during which time we have built testing fences aggregating in all 375 feet in length, and each of those sections, 5 feet high and 5 feet in length on each side, cover the four types of lumber. Upon that we have put the paints and tested them, and we have analyzed hundreds of paints. We have painted new houses and old houses, and we have repainted them. We have painted the mill buildings at the Agricultural College and the large armory, some of these buildings containing eight or ten different makes of paint upon the same building, and we have made at the college a large number of analyses.

Mr. MANN. Having done all that, are you prepared to express an opinion in reference to the purity of the paints, or the comparative value of paints, mixed or otherwise?

Professor LADD. I will say that I would condemn the use of water in any paint. I have seen paints with some 20 to 30 per cent of water in them, and it has no business in there. Further than that, I believe that benzine and benzine products do not have an equal value with turpentine, but there are others who differ with me upon that point.

Mr. ADAMSON. You haven't any confidence in any mixed paint unless it is made of lead and oil?

Professor LADD. No, sir; in the first place, the standard of North Dakota is white lead and zinc, and mixtures of those two, but it does not specify what proportions. But if you substitute anything else you must show what it is, because the public have been educated by the manufacturers of paint and by the advertisements, up to the fact

that white lead and zinc are the bases of the best paint, but there are manufacturers of paint on the market who advertise their best paint as containing white lead and zinc in the first grade, but do not say what are in the next grades.

Mr. MANN. Now, you have eliminated water and condemned benzine.

Professor LADD. I do not believe that all grades of marble are the equal of precipitated chalk, though they are both about the same composition. I do not believe that paint made of precipitated calcium carbonate is a good paint.

Mr. MANN. Anything else?

Professor LADD. I think there are some paints sold by catalogue houses and department stores that are but little better than clay that can be taken out of claybanks and ground up and prepared and put on the houses, nothing more than what might properly be termed, under those conditions, mud and water.

Mr. MANN. How about the character of oil that is used?

Professor LADD. The oil used in quality is not as bad as has been at times represented. Much of the oil in the paint has been prepared properly, ripened, and matured. There are oils made from green seed perhaps, which are inferior in quality. But I will say so far as oil is concerned, that we have not had the trouble that we have had with the other ingredients.

Mr. MARSHALL. I have a letter from a stranger who states that the refuse from oil refineries is shipped to New Orleans, and made into an imitation of linseed oil, and he goes so far as to say that there is little if any linseed oil in the preparation.

Professor LADD. I know very little of that.

Mr. BARTLETT. Is there not a National White Lead Company, known as the "white lead trust?"

Professor LADD. There is a National Lead Company.

Mr. BARTLETT. And called the "white lead trust?"

Professor LADD. I have heard that name applied to it.

Mr. BARTLETT. You do not know where its principal office is?

Professor LADD. I think it is in New York.

Mr. BARTLETT. They claim to sell pure white lead altogether, do they not?

Professor LADD. That is the product they claim to sell in North Dakota.

Mr. RUSSELL. Have you any manufacturers in North Dakota?

Professor LADD. No, sir; we have not.

Mr. BARTLETT. The white lead trust is very much agitated in regard to this bill?

Professor LADD. That I could not say.

Mr. BARTLETT. They have not manifested any interest in it that you know of?

Professor LADD. I see that there is a representative of the company here.

Mr. SHERMAN. You are the author of this bill, are you not?

Professor LADD. Of this bill?

Mr. SHERMAN. Yes; the so-called Marshall bill?

Professor LADD. No, sir; I can not say that I am. I consulted with Mr. Marshall, or he with me, in regard to some of the features of it.

Mr. SHERMAN. But you would not go so far as to say that you are the author of the bill?

Professor LADD. I gave suggestions to Mr. Marshall and assisted him so far as I could.

Mr. ADAMSON. You do not have to daddy anything just to show a Congressman how to do it?

Professor LADD. No, sir.

Mr. MARSHALL. I will say very frankly that I availed myself of his assistance and also that of the Bureau of Chemistry.

Mr. SHERMAN. It seems to me that somebody ought to explain the bill more in detail, section by section, than has been done.

Mr. MARSHALL. Then I would say that there is no one in the United States better able to do it than Professor Ladd.

Mr. MANN. Before the final hearings are finished I want to have Doctor Stratton, of the Bureau of Standards, heard.

Mr. MARSHALL. I do, too; I would like very much to have Professor Stratton heard.

Adjourned at 11.30 a. m. to meet again at 2 o'clock p. m.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Tuesday, April 7, 1908.*

The committee met at 2 o'clock p. m., Hon. Irving P. Wanger in the chair.

Mr. MARSHALL. Mr. Chairman, about the time the committee took a recess Mr. Sherman suggested that there ought to be some agreement about the time of these hearings and about the division of the time. Two of these gentlemen have already been heard, and I spoke briefly, and of course that time ought to be deducted from the time of those favoring the bill.

Mr. WANGER. My experience has been that it is impracticable to indicate in advance how much time will be accorded or will be required.

Mr. MARSHALL. Very well.

Mr. WANGER. If you are not interrupted with questions, you will get through in a very few minutes; but if questions are asked, you will consume a great deal of time. Let the friends of the bill proceed to their satisfaction.

(At this point Mr. Sherman entered the committee room and assumed the chair.)

Mr. SHERMAN. I do not think we are inclined to limit you. Whoever you wish to be heard next, let him proceed.

**STATEMENT OF MR. P. H. WALKER.**

Mr. WALKER. Mr. Chairman, I have really nothing to say in regard to this bill. I did not expect to be called upon. I simply wish to state that from my work in the Bureau of Chemistry in the Department of Agriculture I am very much in favor of a paint law, and I think the Department is—of a paint law, however, which is along the lines of this bill and not along the lines of drawing up special standards. I think the gist of Mr. Marshall's bill is honest labeling,



and as I understand the bill, that is really all that is there. We simply wish the manufacturer to state what he is selling, no more and no less. We do not want to tell him what he shall sell or how he shall advertise his goods, but we simply want that he shall state on the label what is in the can, and how much. We have made some little examination of paints and have reported, and we find all kinds of results. We also made some little examination of paints that are bought in the open market, and find to a very great extent that cans of paint are, among other things, short in weight and short in measure. It is rare in our experience that a can of paint which says on the label that it contains a pound, contains 16 ounces of material, or if it says that it contains a gallon, that it contains a full gallon. Also a number of samples are absolutely falsely labeled. That is really all I have to say on the subject, unless there are some questions asked, which I will be glad to answer to the best of my ability.

Mr. SHERMAN. Your position is that you desire to prevent deceit, that is all?

Mr. WALKER. That is the whole position.

Mr. SHERMAN. You are not advocating the establishment of standards?

Mr. WALKER. I am not advocating any particular kind of paint.

Mr. SHERMAN. Very good.

Mr. MARSHALL. Mr. Peters is here. I this morning spoke of him inadvertently as being in favor of this measure. Perhaps I ought to say that Mr. Peters is in favor of paint legislation along the lines of this bill. Am I right?

Mr. PETERS. Quite so, sir.

Mr. MARSHALL. I would like to have him heard at this time.

Mr. SHERMAN. Do you think ten or fifteen minutes would be about what you want?

Mr. PETERS. Yes, sir; I think so.

#### STATEMENT OF MR. JOHN M. PETERS, OF NEW YORK.

Mr. PETERS. I appear as the representative of the National Paint, Oil, and Varnish Association, being chairman of the legislative committee of that organization. That organization is a federation of local clubs in some 16 or 17 different cities of the country, and has a membership of about 700. That membership includes paint manufacturers, manufacturers of lead, manufacturers of oil, dealers in all of those products and manufactures of collateral lines. To say that there was absolute unanimity in that organization concerning legislation would probably be a case of misbranding within the meaning of this act, but the organization at its last convention passed resolutions instructing its legislative committee to favor legislation, if legislation was to be enacted, along the lines of a conference bill which was agreed upon at a conference of committees from that association, the Paint Manufacturers' Association, and the Association of Master House Painters and Decorators, in May last.

The possibility of legislation of a general sort having become sufficiently apparent at that time, those three organizations got together for the purpose of agreeing upon a bill which would in their minds

be practical and at the same time would afford the public the protection which it was the design of this sort of legislation to afford it. Now, so far as the bill introduced by Mr. Marshall conforms to the provisions of that bill, I certainly am in favor of it, and I speak now as the representative of that organization. The general purpose of Mr. Marshall's bill we are certainly in favor of. In a number of particulars the provisions of Mr. Marshall's bill seem to us to be impractical, and for that reason we would hope for its amendment, but in a general way, in so far as it provides for honest labeling, and so far as its comprehensive covering of all metals and pigments relating to the paint trade is concerned, it is entirely in accord with the bill upon which we have agreed. We fully appreciate Mr. Marshall's interest in the matter and the effort that he made before introducing this bill to acquaint himself with the sentiments of the paint trade. Unfortunately the paint trade did not respond to his invitation for information as generously as it should have done, or, I think, from the very fair disposition he has shown in the matter all along, and from his remarks this morning, the differences between this bill and another bill which I believe is before your committee, which was referred to this morning—the Dalzell bill—would have been practically removed.

I shall not attempt to point out all of the little points of difference, because there are a great many of them that are more legal than anything else, and they will suggest themselves to you gentlemen in your further consideration of the bill better than I can suggest them; but beginning with section 7, provisions *a*, *b*, and *c*, that is the whole of the section, are impractical from our standpoint. Just the meaning of section "*a*" I am not quite able to comprehend, but the effect of all of those provisions would be, as some of you gentlemen suggested this morning, to establish a standard or to attempt to establish a standard, or to assume a standard, and I take it there is no disposition to pass a law which is not practical of enforcement, and without a standard being set up by this act, or one already existing, it would seem to us that this matter, which I think conforms quite closely to the language of the pure food and drug act, would not be practical in a paint law. The paragraphs which follow in section 8, while not absolutely identical I think are in the main in accord with the act which we have already favored, with the exception of section *d*, which includes varnish. There seems to be some difference of opinion to what extent this would compel the labeling of varnish, but while I am not a varnish manufacturer nor yet a chemist, I am quite confident from what I know of the subject that the analysis of varnish is impractical, at least to the extent of enabling one to prove fraud, and the mere requiring of the label stating the composition of a varnish would be absolutely of no use unless you could prove fraud, in case a fraud had been committed.

Mr. RICHARDSON. Have you gone over paragraph "*b*" of section 7?

Mr. PETERS. Yes, sir.

Mr. RICHARDSON. What definition do you give to this expression "materials contained in the article be of inferior quality?" How do you define "inferior quality?" How are you going to determine about inferior quality?

Mr. PETERS. I say you can not. This assumes a standard. There is no standard.

Mr. RICHARDSON. Is it not a fact that there are different jobs of painting that require different characters of paint, some inferior to others? Suppose a man is going to build a barn and wants to paint it, it does not take the same quality of paint as it does to paint a restaurant?

Mr. PETERS. That depends on how wise a man he is.

Mr. RICHARDSON. Suppose that he is a wise man?

Mr. PETERS. Then he will use as good paint on a barn as on anything else.

Mr. RICHARDSON. Not paint of an inferior quality?

Mr. PETERS. No, sir. Now, the question is, what is an inferior quality?

Mr. RICHARDSON. That is what I want to know of you.

Mr. PETERS. My idea as a paint manufacturer is that pure white lead and pure linseed oil make the very highest quality of paint.

Mr. McCAFFERTY. Now the cat is out of the bag.

Mr. PETERS. There is no cat in the bag.

Mr. McCAFFERTY. Yes; there is. Are you a practical paint manufacturer, may I inquire?

Mr. SHERMAN. Outsiders will not interfere; proceed with your statement.

Mr. PETERS. Have I answered your question, Judge?

Mr. RICHARDSON. Yes.

Mr. KENNEDY. He is not the author of the bill.

Mr. RICHARDSON. I understand. I just want to get some information. How are you going to test and find out about the quality of these materials being inferior?

Mr. PETERS. The reason I object to this clause is because I do not think it is practical to find out, unless you set up a standard. Now, if you want to go to the extent of setting up a standard for the purpose of determining what is inferiority in paint, that is another story.

Mr. RICHARDSON. That brings it right back to the first question. In the pure food bill we could very well regulate the standard as to health, but in this matter of a standard of paint, one man will think a paint has an inferior material in it, but some other folks may think that it is not inferior but rather superior, and there is a great difference in the price of paint.

Mr. PETERS. Yes.

Mr. RICHARDSON. And there is a great difference in the use you are going to put a paint to—whether you are going to put it on a house or a barn, or where you are going to use it.

Mr. PETERS. There are different ideas as to value. There are gentlemen who manufacture paints out of much cheaper material than goes into the paints which we sell who regard their paints as fully equal to anything made from linseed oil and white lead.

Mr. RICHARDSON. How would you label that?

Mr. PETERS. I would label it just what it is. If a man thinks barytes is better than white lead, he has a perfect right to buy it and use it.

Mr. RICHARDSON. Certainly, a man has a right to buy anything he pleases. If a man wants to buy an inferior paint and use it, he has a right to do so.

Mr. PETERS. I do not say that it is inferior. I say that it is cheaper.

Mr. RICHARDSON. He may buy an inferior grade and use it if he wants to.

Mr. PETERS. A cheaper grade. Possibly it is superior. I will not pretend to say in regard to that. But what I say in regard to this legislation and the purpose of it is that it is to give the consumer, the buyer, an opportunity to know what he is buying and an opportunity to compare, because he can not analyze or tell in any way except by putting his paint on something, and then it is too late to test it.

Mr. RICHARDSON. You can not analyze varnish, can you?

Mr. PETERS. I can not analyze anything, myself.

Mr. RICHARDSON. Is it possible for a chemist to analyze varnish?

Mr. PETERS. It is not possible to make an analysis of varnish that really tells anything; but the thing we are asking for in this legislation is a bill that will require honest labeling, and it is up to each manufacturer to prove to the satisfaction of the consumer that the ingredients which he uses in his goods are better than the ingredients which somebody else uses, and it is up to the consumer to say which of these combinations he prefers to have; but unless he has some means of judging of the combination of two things, he has no means of comparing their value.

Mr. RICHARDSON. Then it becomes impractical, as a general proposition?

Mr. PETERS. No; I think the labels are very practical, because it gives a man an opportunity to compare. He can educate himself. There is no other way he can judge. All cans look alike to the buyer, you know. Two cans of white paint will look alike to the consumer, or to any man who does not investigate or analyze them, and unless the label shows him what is in those two paints, and he can compare them, he has no means of learning their comparative value. Do I make myself clear on that point?

Mr. RICHARDSON. Yes.

Mr. PETERS. In the main, those are the objections, the criticisms, that I have to Mr. Marshall's bill. The bill which we adopted at Cincinnati, which we agreed upon at Philadelphia, and which was indorsed by my convention at Cincinnati, is practically identical with this other bill which is before you.

Mr. SHERMAN. The bill introduced by Mr. Dalzell?

Mr. PETERS. Yes, sir; by Mr. Dalzell, and now in saying that I favor the Marshall bill I want to be understood as favoring it as a general proposition, and if that general proposition could be made more specifically to conform to the terms of the Dalzell bill, it would exactly meet the views of the association that I represent.

Mr. SHERMAN. You mean, then, that you favor legislation, and that you favor legislation as laid down in the Dalzell bill rather than as laid down in the Marshall bill?

Mr. PETERS. The Dalzell bill lays it down more perfectly and clearly, from our standpoint, and to the extent that the two agree we are in favor of both of them; but there is very little in the Dalzell bill to which I could find objection. There are one or two minor clauses that I will point out to the committee in a letter, later on, giving it more detailed consideration; but I simply wanted to put my opinion on record favoring paint legislation in the direction of honest paints. I thank you, gentlemen.

Mr. ESCH. The third provision of section 8, on page 7 of the bill introduced by Mr. Marshall, provides as follows:

Third. If in package form and the contents are not stated plainly and correctly in terms of net weight or measure on the outside of the package.

A similar provision was stricken out of the pure-food bill, the theory being that while the canner might put in full weight and measure at the time of canning, owing to leakage or evaporation, or some other cause, it would not hold its measure, and therefore the canner ought not to be put under penalty on account of that fact. Is there a like leakage possible in the case of paint?

Mr. PETERS. There is none that I know of in the case of canned paints. In the case of paints put up in wood there is likely to be a soakage, which would not affect the gross weight, but would affect the net weight of the package, or rather of its contents.

Mr. SHERMAN. The idea was that the can was sold as a can of the size that the ordinary housewife had become accustomed to, in the case of foods, rather than as a package which contained any specific quantity, either in measure or in weight.

Mr. ESCH. My understanding of one of the provisions, whether it was the one you had stricken out or not I do not know, was that it required the weight or quantity to be stated, and if that were done, and there was any falling off from that, there would be liability.

Mr. SHERMAN. Yes.

Mr. ESCH. Now, I want to know whether a similar rule is going to be applied to paints.

Mr. ADAMSON. I remember voting to strike that out, but I voted and thought the others voted to strike it out, because it was not any of the business of Congress to go around teaching morals to people about quantity and weight.

Mr. SHERMAN. No; the can of vegetables or fruit, or whatever it might be, was not labeled a 1-pound can, but in commercial parlance it had gotten to be called a 1 or 2 or 3 pound can and so was labeled, and the contention was that the ordinary purchaser was accustomed to purchase a can of beets or a can of pumpkins or a can of tomatoes and had no thought whether it was a pound can or a 14-ounce can or a 20-ounce can; that she or he was accustomed to a can of that particular size, and that there was no attempt to deceive, and in fact there was no deception practiced at all.

Mr. ADAMSON. If you continue to pile upon Congress the business of Sunday schools and police courts in little matters like this, we will become so clogged that the machine will stop without any filibustering at all.

Mr. ESCH. Then you say that there would be some change in weight; there would be soakage?

Mr. PETERS. That would not change the gross weight of the package. Some of the oil and perhaps other ingredients would soak into the wood, but they would be in the wood, and while the whole package would weigh the same there would be a difference in the net weight of the contents. But concerning that, there are other gentlemen engaged in the business of mixing paints who are here, and they can tell you better about that than I can.

Mr. MARSHALL. Mr. Chairman, I think there are a number of gentlemen here whom I do not know who would like to go on record by making a brief statement that they favor paint legislation.

Mr. SHERMAN. What is the use of wasting our time by having people simply stand up here before us and say that they are in favor of certain legislation. If they have any arguments to advance why this legislation should or should not be enacted, we will be glad to hear them.

Mr. MARSHALL. Very well; I presume they have arguments to go with their sentiment. These people evidently came here for something, and if they desire to be heard I would like to have them heard.

Mr. SHERMAN. Who desires to be heard in favor of the Marshall bill first?

Mr. ADAMSON. Or on the general proposition to have Congress attend to painting your houses for you?

Mr. SHERMAN. If there is no one else to be heard in favor of the bill, who desires to be heard in opposition to the Marshall bill, and for whom do they speak?

Mr. ORISON B. SMITH. I represent the Eastern Paint Manufacturers' Association, which comprises a number of States in the East, all the way down from Maine, and then I represent another organization, the most important of all.

Mr. SHERMAN. What is that?

Mr. ORISON B. SMITH. I am major-general commanding the paint army of America.

Mr. H. A. STERN. I represent here the Paint Manufacturers' Association of the United States, which comprises the main national distributors who do business throughout the country, and enough small ones to constitute about 100 manufacturers. We are not here to oppose Federal legislation. We simply want to point to a couple of the features of the bill. We have several gentlemen who would like to be heard in an order subject to your approval. I also speak for the national varnish manufacturers in the same way.

Mr. GEORGE L. GOULD. I am president of the National Paint, Oil, and Varnish Association, and I would like to speak briefly a little later on, at your pleasure, in regard to this, and also as a jobber and manufacturer.

Mr. SHERMAN. Is that the same association for which Mr. Stern speaks?

Mr. GOULD. No, sir, Mr. Peters. Mr. Peters is chairman of the legislative committee.

Mr. STERN. These names are confused. I speak for the National Varnish Manufacturers' Association, and for the Paint Manufacturers' Association of the United States. Those are both manufacturing associations. Mr. Gould's association is the same as that of Mr. Peters, which is a distributing association of jobbers.

Mr. ARTHUR S. SOMERS. I represent the eastern paint manufacturers and the dry-color manufacturers.

Mr. SHERMAN. Is that the same association that Mr. Smith speaks for?

Mr. SOMERS. Yes, sir.

Mr. JOHN DEWAR. I speak for the National Association of Master House Painters of the United States, and incidentally the people.

Mr. SHERMAN. You are opposed to the Marshall bill?

Mr. DEWAR. I am opposed to the Marshall bill so far as it relates to standards.

Mr. ORISON B. SMITH. I claim time enough, Mr. Chairman, until I get through. That is my purpose, as the major-general of the paint army of America, and I claim an hour or two hours, whatever may be necessary for me until I get through. I claim that as my right as an American citizen.

Mr. SHERMAN. Then we will start with these gentlemen who do not want quite so much time.

Mr. JAMES A. McCafferty. I am the manufacturer of the Gold Seal white lead—combination white lead. I represent myself.

The CHAIRMAN. How much time will you want?

Mr. McCafferty. Oh, about five minutes.

#### STATEMENT OF MR. JOHN DEWAR.

Mr. DEWAR. Mr. Chairman and gentlemen, I was appointed a year ago as chairman of the legislative committee by the National Association of Master House Painters and Decorators of the United States to seek to formulate a bill protecting the master painter in his purchases of goods entering into his business, and in conjunction with the legislative committee of the Manufacturers' Association of the United States, and the Paint, Oil, and Varnish Association of the United States, we agreed upon a bill which we thought fair to all people concerned—the jobber, the manufacturer, and the master painter—and there was perfect unanimity in that bill, and it was unfortunate that our national associations could not agree upon that bill until their annual meetings, the last one being that of the master painters in New Orleans last March. In the meantime, unfortunately, Mr. Marshall prepared a bill which has been the means of considerable contention and confusion. Now, the necessity of the true, honest labeling of paints, oil, and turpentine I am sure is apparent to every gentleman in this room. The master painters in this country are not manufacturers; they go into the market and buy the white lead labeled "Pure lead," but we do not know that we get it; we are not chemists.

Mr. BARTLETT. There is the same thing to be said about everything else. You go and buy a horse and he is said to be 4 years old, but he may be 10 years old.

Mr. DEWAR. But you may, without being a horse doctor, be a pretty good judge of horseflesh. But we are not chemists, and we want a guaranty with the purchase from the manufacturer. The paint manufacturer has agreed that that protection is due to the master painter of this country. We want it, and we want your assistance to insure the honest labeling of the contents of the package for our use, or your neighbor's use, to paint your house and my house; to be used on your house and my house.

So far as the Marshall bill as it stands now goes, I am opposed to it. Why? Because it creates a standard. Why, gentlemen, we have learned more within the last five years of what constitutes good paint than we ever knew before in this country, either as manufacturer, chemist, or painter.

Mr. RICHARDSON. How did you learn it?

Mr. DEWAR. We have got together because we have realized that the best paint possible is not yet being made, and there is not a manufacturer or a chemist in this room that will dare dispute that and say that we have arrived at the zenith of paint making.

Mr. RICHARDSON. Could you not get a pretty good knowledge of that? You represent the people that put the paint on the houses. Could you not get a pretty good knowledge by looking at the paint and seeing whether it holds or lasts? Would it not be a pretty good admonition that you should not deal with that firm any more if it did not hold?

Mr. DEWAR. I am glad you mentioned that. I want to prove to you, as a practical man who has learned it by working at it day after day and night after night, the inadvisability of creating standards. Why, sir, the paint that is the best on the seashore is wholly unfit to use under conditions inland. The paint that is used in Pittsburg in other parts of the country is not suitable, owing to climatic and local conditions.

Mr. BARTLETT. You take paint down in my country, where it is very hot in the summer; it would not last, probably, as long as it would in this country, farther up north.

Mr. DEWAR. No, sir; I disagree with you. I do work all over the country, and I know that the paint that I apply at Atlantic City or in seaboard towns will not in other sections of the country be adapted for their use.

Mr. RICHARDSON. If that is the fact, how would you label the paint applicable and appropriate to be used in different parts of the country?

Mr. DEWAR. I would leave it to the master painter to judge, by the honest labeling of the cans, what is best suited for his use in the section of the country where he is to use it.

Now, what does this paint problem mean? There are upwards of 250 paint factories in the country, employing more than 50,000 people. The annual output of these factories for 1907 was approximately 100,000,000 gallons. That was mixed paint. The painter in the farming and great western districts largely uses mixed paints, but the master painter in our larger eastern and many of our western cities makes his own paint. The master painter who buys the prepared paint, the farmer, and the householder want to know just what they are paying their good money for. The master painter in Pittsburg, Washington, New York, or Chicago buys the ingredients to compose the paint. Then he combines them together, his lead, his zinc, and his coloring matters, and he formulates a paint that is suitable to meet local conditions, and not being a chemist, he wants to be in a position to know that when he buys the lead it is pure lead, or, if he wants to buy it and make a combination of lead, he wants to know what he is getting, and the percentages entering into that combination.

Mr. RICHARDSON. I can not get at the full gist of what you mean. If I go into a store and want to get a good woolen undershirt, sometimes they put off a mixed one on me, one that is not pure wool. Do you think anyone ought to be there to guide and tell me what I am buying, or should buy? I can not tell it by feeling.

Mr. DEWAR. No; but you will know it by wearing it.

Mr. RICHARDSON. That is what I say about the paint; put it on a house and see how it wears.

Mr. BARTLETT. The thing to do with that kind of a man, who puts off an inferior article on you, is not to buy anything more of him.

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Mr. DEWAR. Yes; but we sometimes do not know it until the deviltry is done.

Mr. RICHARDSON. Can you imagine any of the relations of life in which a man can not be imposed upon?

Mr. DEWAR. No; there is none; but we want to minimize that. I was going to mention about reenforcing materials, and all that. As I stated before, Mr. Marshall has been perfectly honest. He had only the welfare of the people at large in view when he prepared his bill. It was unfortunate that he did not extend his information a little further and get that which is now known in the Dalzell bill. Had he gotten it, it would have filled all the requirements he claims to do, and would have done away with this certain amount of feeling that is exhibited around this table to-day; and I am quite free in saying that if Mr. Marshall wishes to do the magnanimous thing, he will say, "Gentlemen, to get rid of this feeling that now exists I will adopt, if it is permissible, the Dalzell bill, which, in the mind of every manufacturer and every master painter here, is just and equitable in protecting the manufacturer from unjust discrimination, and also protecting the master painter and the public at large."

#### STATEMENT OF MR. JAMES A. McCAFFERTY.

Mr. McCafferty. Mr. Chairman and gentlemen, I wish to submit my label that covers the ground that a great deal of this talk is based on, namely, the sophistication and deceit of the manufacture and sale of paints. There is a brand that I have manufactured for over forty years (exhibiting label). Shortly after the civil war I got to work on this thing, and it has hit a great many of those lead corrodors who belong to this lead trust. In the first place, they bought up all the lead manufacturers in the community in every direction. Then they thought they would finish the business. The next move was against the men who were making combination lead. There is no question in my mind that there is mean paint being sold, but it never was sold on the basis or lines that you are being called upon to listen to. If you wanted to buy paint to paint your barn, you would not want to be confined to pure lead. As to this pure lead business and pure zinc business, if you were to eliminate all the other kinds of paint out of the market, you would not find enough in the United States. In other words, our paints are not one-half constituted of these pigments. The whole question of paint lies in the quality of the linseed oil and also in the knowledge and skill of the man manufacturing it. There is an old saying: "The Lord sends meat and the devil sends cooks." There are a lot of people in every direction who would like to get some law or other whereby they might cinch the business.

If any painter wants to buy good materials, he has no difficulty in getting them, and I defy any painter anywhere to come forward and say that he can not buy pure lead and zinc and amber and sienna and pure green. If he buys pure green, it is worth, dry, about 24 cents a pound. We make a better paint by manipulating that with other articles than that party could make out of that pure stain. The color has no substance. There is not a man living who can find two painters who have the same idea about doing a job, and whenever a man spoils a job it is "that darned paint." You never found a man

yet who would not say that. I saw a sign when I came home from the war put on an elevator in the place where I went to work to earn my living: "The manufacturer of this elevator guarantees a first-class machine, but can not insure the safety of those who use it without brains." In old times, when paint was not so plentiful, the painter had not alone to grind his own paints, but he had to make them. He had to have a proper knowledge of the pigments. The result we see in the paintings of Raphael and Murillo and the other old masters. Nobody can tell to-day where they got their colors from. They claim it is a lost art. When I came home from the war and went to earning my living, I found that most of the colors were imported from Germany and France. I have lived to see the time come when they are all made in this country, and the money is kept here. There are a lot of people in this business, and if one fellow gets ahead of the others, naturally they are going to feel it. They come out with a lot of chemical stuff like  $\text{CH}_4$  and  $\text{NO}_2$  and spring it on you, and the result of that is that we get mystified.

Mr. RICHARDSON. Then you want to come to Congress and get them to help you?

I am interested in this bill, and the one particular condition of it that appeals to me more nearly than any other is one which has not been touched upon and may not be touched upon by any of the gentlemen who may argue the matter before you later. I want Professor Ladd to follow me closely on this. It has been provided that, where coloring matters are used in the mixture of paint, the formula for the analysis of that coloring matter shall appear upon the label on the can. I am in the business of manufacturing colors. I am not a paint manufacturer; I do not know anything about paint. I do know something about the manufacture of dry colors. I have been in the business for nearly twenty-five years, and all of my energy, my life, and the best talent that God has given me, has been invested in that business. It is the only asset that I, in common with thousands of others in this country, have, the knowledge that we have of combining certain chemical properties and making a color of these chemical properties, each of which bears no relation whatever to the color produced in the final preparation. I am asked under the terms of this bill to give to the manufacturer who buys that color the analysis and formula—my only stock in trade. I am required by one stroke of the pen to give to the manufacturer what it has taken me twenty-five years to accumulate, what it has taken that man on the right-hand side of the table fifty years to get to know; what it has taken his house one hundred and fifty years, perhaps, to accumulate.

Mr. McCafferty. No. The Roosevelt idea is that we shall grow up to be men, and we are men. I want to emphasize this thing, gentlemen. I am not given to speaking as a general thing, and I will not say anything more. I thank you very much for your kindness in listening to me, and I hope you will think over what I am saying.

#### STATEMENT OF MR. ARTHUR S. SOMERS.

Mr. SOMERS. I am here to-day to oppose the Marshall bill and to record myself as unalterably opposed to any kind of legislation that seeks to compel men to be honest if they are not going to be honest.

There are many phases of this matter that I might discuss to-day, but I shall try to confine myself to two points. The first is that I hold that no industry and no special branch of industry in this or any other country ought to come to the members of the legislative body of that country and ask them to constitute themselves a police organization for the purpose of imposing certain conditions upon people. I have been very much edified by the speech of the gentleman who represents the Master Painters' Association, and I am glad to know that the hearts of the master painters bleed so much for the poor, suffering public who have been compelled to pay large sums of money to have their houses painted, and I want to call attention to the fact that the gentleman did admit that it was possible for the master painters to buy pure lead and zinc and oil and mix those together and apply them and to use some color if tinting was necessary.

All of it I am asked to give up by publishing to the world broadcast the formula and analysis upon which the color is made. And I submit to you, gentlemen, that this bill, if it is passed, will put upon us the greatest hardship and the grossest kind of injustice. I know of no reason why the United States Government should feel it necessary to compel any man, any manufacturer, to expose the secrets of his business that he is engaged in, and particularly if there be about the manipulation of a manufacturer a process which is undiscoverable; and nobody knows better than the Professor, who has admitted that he has had much to do with this paint legislation, that there are certain things about the paint business that are undiscoverable by the closest analysis, and no one can tell the component part used in the manufacture of a color compound; but notwithstanding that this is the chief asset that a man in the business has, that he depends for his success in business upon that, notwithstanding it is all that he owns and has and all that he and his family have or hope to have, here he would have to disclose his formula and analysis by which he makes the paint that is upon the bottoms of the boats, for instance, throughout Chesapeake Bay and on the Atlantic and Pacific.

Mr. BARTLETT. Are any of these processes patented?

Mr. SOMERS. None whatever; for that would expose the secrets. These paints are not used on houses. I make a compound that could not be used on any house, yet it serves as the basis of a paint. It is known as Paris green. No man would think of painting the interior of his house with Paris green. He would be a fool to paint the exterior of his house with it. I am asked to tell you, according to a literal construction of this law, what my Chinese blue or my Prussian blue, for instance, is composed of, and I am asked to give the exact percentage of every ingredient that goes into the color. Some of you say the bill does not go that far, but the provisions of the bill make it possible to go that far. In other words, I want to protest here against any legislation that will compel me to disclose any business secret or any asset that I may have.

Mr. RICHARDSON. Unless it relates to health; then you would be required to?

Mr. SOMERS. Exactly so, and unless there is fraud committed; unless I attempt to deceive the purchaser. If I sell a man something for what it is not, put me in jail and fine me; I am responsible,

or rather the house I represent is responsible. I say to Congress and the States, "Do that if it is necessary." If I sell you something that is not pure, and I sell it as pure, put me in jail; yes, I will submit to that. I may not agree with some of my confrères on this proposition, but I am willing to go that far. But I do protest against your branding me as a thief, as it were, branding me as a fraud, as it has been stated here to-day, when it was insinuated that there were fraudulent paints in the United States. I do not know of a single one. I know some cheap paints are manufactured, and there are some houses that make an inferior grade of paint, but they do not claim it to be an absolutely pure paint, if such a standard can be set as "pure paint," and you will note that no standard has been offered.

Mr. RICHARDSON. Are you speaking entirely of paints, or do you include drugs or dyestuffs?

Mr. SOMERS. Dyestuffs as colors—that is, dyestuffs which go into the manufacture of paints that are used in coloring; and if you ask me to give you an analysis of certain colors, they are combinations of certain elements that are gotten together that produce certain effects, and they are given fancy names, and they are known only to science. I happened to see in one of the trade papers recently that a discovery had been made of an azo color, the name of which as given contains 42 letters. Now, I would be required to put that name on the label in the analysis of the paint, and let the house painter, the master painter, or the householder throughout the country guess as to the best method of pronouncing that.

I thank you gentlemen for your patience in listening to me. I think I have exhausted my time.

**STATEMENT OF MR. GEORGE L. GOULD, OF BOSTON, MASS., PRESIDENT OF THE NATIONAL PAINT, OIL, AND VARNISH ASSOCIATION.**

Mr. GOULD. Mr. Chairman and gentlemen, necessarily I will go over a few of the things that were touched upon by Mr. Peters in what I have to say to you. As president of the National Paint, Oil, and Varnish Association I wish to present before your committee a copy of a document entitled "An act to prevent deception in the sale of paint, turpentine, and linseed oil," which is contained in the book of proceedings of our twentieth annual convention, held in Cincinnati last October, said act having been agreed to by a vote of 24 to 2. It will be seen that this bill was recommended for adoption by State legislatures and is considerably different from the bill now before your committee.

Our association is composed of delegates from 15 clubs from large cities throughout the country and individual members as well from places where no local clubs exist. This membership includes quite diverse interests, such as manufacturers of carbonate and oxide of lead, sulphate of lead, zinc, lithopone, whiting, silica, dry colors, mixed paints of all names and natures, linseed oil, spirits of turpentine, rosin and rosin oil, benzine, varnish, driers; also grinders of colors, leads, putty, and so forth, importers of colors, gums, and so forth, also jobbers and distributors of paints, oils, and turpentines—all directly affected by the proposed legislation—besides all allied interests, such as manufacturers of brushes, tin cans, and so forth, incidentally affected.

A moment's consideration will show that it would be unwise and unfair for anyone in an official capacity to commit our great association one whit further than it has already committed itself, and therefore I can not indorse the Marshall bill for the national association.

For instance, to show the percentage of each ingredient whenever varnish, japan, or drier is used in paint would require analyses of all varnishes and driers, and experience has shown that, however desirable it might be, it is physically impossible. Another requirement which was not in the bill recommended by our association is that of the labeling of all dry colors and all dry paints, including probably calcimine, which is now so extensively used for fine ceilings and walls as well as common work, in order to show the percentage of each ingredient. This provision would never be agreed to by many of our members, and is a trivial one to attempt to apply to articles of such very small cost as most of the dry colors and calcimine now sold.

It would work great hardship to some manufacturers who have labored for years to build up a name for some particular article, which possesses peculiar excellence or superiority through secret formulæ, which would become common property if this law should pass. Our association having committed itself in favor of labeling contents of packages containing articles called for under section 2 of the act, as presented by me, I can not as an official of the association take exception thereto. I do, however, object to the second paragraph of section 2 of the Marshall bill, referring to articles of "inferior quality." It is perfectly true that there are very many low-priced paints, designed for cheap work, composed of articles which might be truly called of "inferior quality," and yet which give good satisfaction, at the same time being within the means of people of limited income. In spite of labeling under the provisions of this section, the sale of such paints, so largely used for roofs, fences, barns, and farm wagons, stains, and even dry colors, would be liable to be prohibited.

The act recommended by our association states, in section 3, that the label required shall clearly state certain things in the English language, in plain, legible type, whereas in the Marshall bill, section 8, it states:

There shall be shown clearly and distinctly upon the face label and in the English language: First, name and residence of manufacturer or distributor or party for whom the paint is made; second, true net weights or measures on every package of paints, dry colors, colors in oil, japan, or water, or mixed paints; third, name and percentage of each ingredient, solid and liquid, contained therein; fourth, percentage of other than chemically pure colors, or when varnish, driers, and japans are used, the percentage of each ingredient.

And all this on the face of the label.

Our association never has officially indorsed the idea of stamping net weights or net measure on every package, but I feel sure there would be no strong objection to such provisions if the label were suitably placed on the package.

All of the large manufacturers are now putting out their goods in that manner, as distinct from gross weights, heretofore by universal custom followed, the movement having been inaugurated by the manufacturers of pure white lead. We do, however, most decidedly object to the proposed requirement of placing arbitrarily all these particulars on the face of the labels. Our manufacturers have many

millions of labels prepared, many of them copyrighted, and if labeling of contents of packages is decided upon—to which proposition, however, I am bound to say there is a large and rapidly increasing opposition—the label should be placed upon some other portion of the package than upon the face of the label, if so desired by the manufacturer.

It would be utterly impossible to carry out the provisions of section 13 of the Marshall bill without a terrible loss to holders of goods unsalable at the expiration of the time limit. There is no disguising the fact that there had arisen, through intense competition, many abuses among certain portions of the paint trade of this country, as well as other branches of industry, and the efforts of our friends in North Dakota to try and remedy matters were very laudable, and they had the effect of calling attention to the wrongs, and very many of them have been righted, and some of the largest manufacturers, and present here to-day, have been very earnest in working to that end. It was felt at that time by many that the paint trade could not afford to antagonize anything where the efforts to improve matters were so laudable, and therefore approval was given to the proposed plan of labeling contents of packages, without such thorough consideration being given on the part of a very large number of manufacturers and jobbers throughout the country to matter of details and possible hardships and injustice as the importance of the question demanded.

I now appear before you in a personal capacity, as one who has had an experience of more than forty years in the paint business, mainly as a jobber, and a large distributor of pure white lead to the extent of nearly 500 tons yearly, and yet partly as a manufacturer, having been a director for nearly twenty years in one of the large paint manufacturing concerns of the country. There may be need of some legislation to prevent gross or irregular weights and measures, false representation, adulteration, etc., which have been prevalent in certain sections of the country, in white lead, oil, and turpentine business, as well as the mixed-paint business; but similar shortcomings prevail in other branches of business to a greater or less extent, and why ours was picked out as the only one outside of the important ones covered by the pure food and drug laws passes my comprehension.

Should not our legislative assemblies as seriously consider the subjects of rubber goods, all kinds of paper and cotton goods, so heavily weighted with the cheapest of "inert" material; also carpets, woolen and other cloths, yarns, ropes, twines, soap, putty, hardware, and metal goods, jewelry, or cement, on the proper manufacture and mixing of which depend not only property interests, but the lives of great numbers of people? Why should not a label be put on every cake or bar of soap used in this country, as well as every half-pint can of paint, or quarter-pound can of prussian blue in oil, or indeed any kind of paint? Surely soap is of much more importance to health. The people at large are not asking for this law, but some special interests which can not be traced may possibly be back of it, and those who will be the most affected by its enforcement do not seem to realize the serious consequences almost sure to follow.

There ought to be general laws which would at least attempt to prevent the evils referred to; but if this is not feasible, why could not a bill be reported similar to what we are considering, and make it

apply in its general provisions, as regards adulteration, to pure white lead, pure spirits of turpentine, and pure linseed oil, and make it apply to the painter or user of such articles as well as the manufacturer or handler? All of the acts referred to ignore the painter entirely, and there are "black sheep" in that profession as in all others, although as a rule the body of men constituting the master painters of the United States and Canada will rank equally well with any other organization of similar nature, and the International Association of Master Painters and Decorators is one with which we are glad to associate by sending delegates to their annual convention.

It should be noted that while under any of the proposed bills these "black sheep" painters can apply "any old thing" for paint on contract jobs without any labeling or restrictions, not one of the master painters, however excellent, can do day work with paint which he prepares himself and charges to his customer (generally the best part of his business), unless he labels every lot he mixes as required under the labeling act; and what painter can do that every time? The International Association of Master Painters could not have fully considered this very important matter, any more than could the dealer or manufacturer when he comes down to actual operation of the bill if it becomes a law.

Another point which I will only refer to is the opportunity for blackmail which this opens to the unprincipled painter or other person; also that the house owner seems to have no redress against the contractor, but the principal burden seems to fall upon the dealer and manufacturer.

The provisions as to net weights and measures could apply not only to the three articles named, but to other articles in the paint business, and really should apply to every article sold, and here "imagination runs riot."

There have been very many sins committed "in the name of pure white lead," and while the manufacturers of pure white lead in this country may not have the full sympathy or support of the jobbers and dealers in these articles, for certain reasons not necessary to explain here, they are entitled to fair treatment in regard to prevention of sale of substitutes for the pure article, and whatever may be said against the corrodors and manufacturers of pure white lead, they can not be accused of cheating or dishonesty as to their product in regard to their business as at present conducted.

I remember when a very young man hearing Henry Ward Beecher tell of his experience when conducted through a white-lead factory by the proprietor and the process of grinding lead was explained. The manufacturer went to a large keg and took a handful of white material and threw it into the mill where was being ground the so-called white lead. On being asked what that was for, he said, it was to ease his conscience for he could now say that "the best part of it was pure white lead." It is true that articles called pure white lead have been put on the market containing not a particle of lead and very largely of the cheapest material used for painting. Any white lead, linseed oil, or spirits of turpentine, that is not strictly pure, should be marked "adulterated" or "substitute," and severe penalties should be imposed for failure to comply with such requirements as to labeling. Manufacturers of linseed oil have just complaint, the same as manufacturers of pure white lead, and if the members of your committee could know of the great number of instances where adul-

terated oil is put out for the pure article—largely from parties outside the State where the oil is used—they would be glad to take at least one step toward a higher standard of purity. Same is true of spirits of turpentine and why should not this article be sold by weight instead of the loose manner at present of selling by gauge.

When, however, it comes to mixed paint, there is a wide difference. This was made clear in the able speech which was made before our convention by Mr. Ernest W. Heath, whose very able efforts and close attention to the subject of this legislation have brought on a very severe illness. He said:

The term "pure paint" implies a standard. The term "pure" is misapplied if used to designate any article except one which has a natural standard, such as milk, butter, and similar food products, such as gold, silver, etc., but to describe any given kind of paint as "pure" is as absurd as to talk about pure watches, pure pianos, or pure umbrellas. The fallacy involved is that the term "purity" is used instead of "efficiency." Paint being a manufactured composite mixture, that paint is the most efficient which accomplishes to the greatest degree and for the greatest length of time the purposes of paint. The only standard for paint is "efficiency" and to describe it as "purity" is to borrow a phrase from pure food legislation which has no proper application to paint.

A buyer of mixed paint should depend on the good name and reputation of the manufacturer, and common business shrewdness, to say nothing of a high business standard, would indicate that this manufacturer when he puts his name on his goods would put out only such articles as would do the work in the most efficient manner. Oftentimes second and third rate goods are put out to meet competing prices, but the name of the manufacturer is not as a rule upon the packages, and anyone who buys such goods buys them on his own risk, just the same as a man buys a fake mining stock or a horse at auction. Some are good and some are not—mostly not.

The concern in which I am a stockholder and director has many formulæ, which have been obtained after years of research, experiment, and large expense. It is not fair to us to be compelled to give these to the world with no recompense, and no injustice whatever is done by not doing so, whereas much loss, indeed, may follow should this be done under pressure. This is true of very many other manufacturers, not only in our line, but in other branches of industry throughout the country.

In the matter of pure food, drugs, etc., affecting the health of the people, it is possible that the particular rights of the comparatively few could be confiscated, especially in an emergency, in order to save the many. Such action, however, can not be advocated in the matter of paint manufacturers, as their goods as a rule do not affect the health of the people. Our industry should not be picked out from all others for a law like this, and while I feel sure that we as a rule are perfectly willing to favor any reasonably fair legislation along the lines indicated, I firmly believe that if legislation like that proposed in detail should pass it would not only be invidious and unjust, but would be declared unconstitutional because of infringement on the property rights of individuals and without adequate cause.

You will understand, gentlemen, that in opposing a general labeling law I am doing it as an individual, a jobber, and manufacturer, and I am convinced that much injustice and loss not yet thought of will result, with no corresponding advantages, and I earnestly beseech you to give the whole subject the most careful consideration to the end that the interests of the people shall be safeguarded and no injustice done to those most vitally interested.



## STATEMENT OF MR. MAXIMILIAN TOCH.

Mr. TOCH. Mr. Chairman and gentlemen, I am not going to keep you very long, because I only have two paragraphs of the Marshall bill that I wish to discuss. I am heartily against those two paragraphs. The one particular paragraph which has been lying in my crop is the one which calls for the labeling of varnish; and in that connection a celebrated professor of physical chemistry once said that if you take salt and water and mix them together and make that reaction you can recover the water and you can recover the salt, and that is called reversible reaction; but if you take a chicken and salt and pepper and water and vegetables and cook them together, by no known principle of science can you reverse the action and get back your original chicken and vegetables and salt and pepper. Now, that is the position we are in with regard to varnish. If you take resin and oil and other ingredients and cook them together, you make a varnish, and it is absolutely impossible for me to analyze that after it gets through, and I have had twenty years' experience at it, and I say it is absolutely impossible for Mr. Stevenson, who has been twenty-five years with one firm, to do it, and it is absolutely impossible for the celebrated chemist of the National Lead Company to do it, and I know that Doctor Hall, who has made a great reputation for himself, can not do it, nor can Mr. Frank.

Mr. RICHARDSON. What is the reason they can not do it?

Mr. TOCH. Because it is a nonreversible reaction. We have destroyed a part of the substances that are put in, and we can not determine what they are. The science of chemistry is weak in that point; and I say if you are going to formulate a law to compel the varnish manufacturer to label the can, you are going to put a premium on fraud, because he can put on any old thing he chooses, within certain limitations, and you can not find it out. That same thing holds good with reference to proprietary paints like the paints for the bottoms of ships. Men have worked a hundred years trying to make poisonous, toxic compounds for the bottoms of ships. If you label that, I do not know what good it is going to do, because you can not verify the label.

Coming to the other paragraph, I could talk for hours on that subject, but I think I have made myself clear. I think that it is absolutely inane to put a label on varnish.

Section 7, paragraph (b), reads:

If any of the materials contained in the article be of inferior quality.

That implies that there is a superior quality, and implying that there is a superior quality implies a standard. I just want to tell you that and I want to make myself clear on that, because Professor Ladd and I have absolutely nothing against each other and we can get off in a corner and talk for hours on things on which we agree, but on chemical topics we disagree, and we have that right as men and chemists. But when we come to that, who is the man who shall get up and say what is of inferior quality? I can point out to you on the White House up here where linseed oil and whiting was used as putty thirty-five years ago, and that is there to-day. That is a pure whiting. If I should tell you that you could make a paint composed of 70 per cent of plaster of Paris, you would say: "That is rotten;

whoever heard of plaster of Paris or gypsum in paint?" Yet for years and years the Pennsylvania Railroad has had its paint made of 50 per cent gypsum, calcium sulphate, 25 per cent of chalk, and that paint has stood on freight cars in all weathers from three to seven years.

Mr. RICHARDSON. Yes; and that would be called of inferior quality?

Mr. TOCH. That would be called of inferior quality. Now, you tell me what inferior quality is? So I could go on ad infinitum. Mr. Somers can make a mixture of three dyestuffs, and while we might be empirically able to say what is in that, I could not go on the stand and convict a man of falsely labeling, because it is not within our power to determine these things. Therefore it is absolutely ridiculous to me that such paragraphs should be in a bill.

Mr. RICHARDSON. I think that is one of the most important paragraphs in the bill. Suppose Congress should pass a law having that in there, and paint should be pronounced adulterated where there was any material contained of inferior quality; what would be the effect of that law?

Mr. TOCH. It would make a tremendous amount of litigation, because you would put every paint manufacturer on the defensive.

Mr. BARTLETT. Would it make you expose your processes, and what you know?

Mr. TOCH. Yes, sir; it would. Mr. Landerbough has handed me these labels [exhibiting labels]. He has been for years a manufacturer of paint for ships' bottoms, and these labels are printed in Chinese, Japanese, French, Italian, and Spanish, and all the languages, showing that Mr. Landerbough has exported these materials and sells them all over the world for protecting the bottoms of ships. I know it has taken all of us who make paints of a select character a great many years to perfect materials for this purpose, and I think it would be absolutely ridiculous and out of the question to open the way to fraud. This puts a premium on fraud, and it forces a man to give away his very best thoughts, and this will certainly not do the master painter any good or do him any harm. I thank you for your attention.

#### STATEMENT OF MR. ROBERT S. PERRY, OF PHILADELPHIA, PA.

Mr. SHERMAN. Whom do you represent?

Mr. PERRY. I am speaking by the request of Mr. Stern for the Paint Manufacturers' Association, and I also wish to present my own personal view on one or two of these points. Gentlemen, you have heard objections to this bill from manufacturers this afternoon. I want to speak of some of the advantages of a national law. I also want to point out some objections to the Marshall bill. Mr. Marshall stated this morning that the difference between the Dalzell bill and the Marshall bill was small, and there was more of a difference than there was a strong discrimination between them. Gentlemen, there are three objections from my point of view as a manufacturer, to the Marshall bill. Doctor Toch has taken up two of them, Clause B of section 7, which purports to set up a standard, and thereby deals with the question of adulteration and the question of varnish, the question of analyzing varnish, while Mr. Somers has

taken up the question of the wrong done the manufacturer and the impracticability of analyzing dry colors. I agree absolutely with Doctor Toch in what he has said as to the impracticability of analyzing the varnish and putting the composition of the varnish on the label. I agree with Doctor Toch absolutely, and with the other gentlemen who have spoken against this bill, in regard to Clause B of section 7, which states that for the purposes of this act a paint shall be considered adulterated if it contains anything of inferior quality. I agree with Mr. Somers that it is not right or practical to have the composition of dry colors, when sold as such, given on a package. If you gentlemen will look at the Dalzell bill, which represents the wishes of a certain large group of manufacturers for their protection, which represents the wishes of the legislative committee of the distributors of paints, the dealers and jobbers of the United States in their stores over the country, and which represents the wishes of the master painters of this country, you will find none of these features to which Mr. Toch and Mr. Somers have objected. I want to be very clear, gentlemen, in drawing your attention to the fact that in the Dalzell bill there are none of these objectionable things which have been covered by the manufacturers.

Having covered that question, I want to go to the question which has been raised here repeatedly to-day as to the necessity of labeling paints. Doctor Ladd has told you this morning that the State needed to protect its citizens in North Dakota against paints which committed a fraud upon the public, coming into the State from mail-order houses and department stores. This is not a small matter; it is a big matter, and means a great wrong to the public. I can also state that there are manufacturers of paint in the United States who deceive the public in the weight of the can, in the volume of the goods in the can.

Mr. BARTLETT. You stated you were in favor of the Dalzell bill, and that did not provide for disclosing the constituent parts of coloring materials. It does not provide for the disclosing of the constituents of the coloring materials when sold as such.

Mr. PERRY. It does not provide for the disclosing of the constituents of coloring materials when sold as such, but simply as they are in the paint. I am a practical dry-color manufacturer, and have studied that very carefully.

Mr. BARTLETT. Section 7, Article B, provides that an article shall be deemed to be adulterated if any of the materials contained in the article be of inferior quality.

Mr. PERRY. That provides for the analysis of the finished goods, not the analysis of the dry color sold as such, and therefore does not disclose the analysis of the dry color as such. That is the essential difference between the Marshall bill and the Dalzell bill.

Mr. KENNEDY. That is, after the dry color is manufactured, the Dalzell bill merely requires the weight of the dry coloring matter?

Mr. PERRY. The percentage.

Mr. KENNEDY. The percentage of dry coloring matter?

Mr. PERRY. And down below a general analysis of it; the general constituents of it. But it does not bring out the secrets of the dry-color manufacturer. I agree with Mr. Somers in his objection as raised to the clause of the Marshall bill.

Mr. PERRY. I feel that the Dalzell bill carefully drawn by us as dry-color manufacturers—

Mr. BARTLETT. You are not protecting the other people, though.

Mr. PERRY. I am a dry color manufacturer myself, and I helped to draft this bill. This is a case where the producer, the manufacturer, and the user have come together, and we have framed up a bill because we need it.

Mr. BARTLETT. It looks to me like you were saying that nobody is orthodox but you. You say that orthodoxy is your doxy, and heterodoxy is the other fellow's doxy, and there is nobody right but you.

Mr. PERRY. The representative of the varnish manufacturers has stated that the Dalzell bill meets the views of his association as expressed at the last convention. He stated so expressly. And there are a number of manufacturers in this country that agree with your Government officials that there is short measure and short weight practiced in this country, and adulteration practiced in this country, and deception in the statements made to the buyer. We want a bill like the Marshall bill as modified in the Dalzell bill, which will protect the average citizen, the buyer, and we want it because it will help us to protect ourselves.

Mr. RICHARDSON. I can not understand why you want it especially as to paints, and you do not want it to apply to anything else or everything else.

Mr. PERRY. I am very glad you raised that question. You seem to have it on your mind.

Mr. RICHARDSON. I have it constantly in mind. I can not get it out of my mind.

Mr. PERRY. Paint is sold, like food products, in closed packages.

Mr. RICHARDSON. I am in favor of the pure-food law, too.

Mr. PERRY. I am going to show you why paint is akin in necessity of protection of the citizen buyer, in requiring a label. Paint is sold in a closed, sealed, and soldered package. The buyer can not feel it like the undershirt you spoke of, or like the horse that you spoke of, but he has to take the advertisement of the manufacturer; he has to take that glowing label as his entire information as to what is in that package. He is buying a pig in a poke; he is swapping jack knives sight unseen with the other fellow, and the other fellow has seen both knives. He puts that paint on a house, and in three years he finds that he has received a piece of bad goods, with deception. He can not find out, perhaps, for three years. When he goes to repaint, he finds that first paint had a dope in it, and the new paint he bought will not stand. As Professor Ladd said this morning, he is gray-headed by the time he gets wise to everything in the paint business, if he tries to learn all about it. I think if a manufacturer puts his products up in a sealed package, as in the case of foods and paints, if the customer has no opportunity of knowing the value of the goods except by the label, then there should be a label on it. I assure you that the one thing the buyer needs to know is the value of the materials in that package, what their value is. A man can put up a paint with 80 per cent of barytes, which costs less than a cent a pound, and 20 per cent of white lead, which costs 6 cents a pound, and he can sell the mixture, if he chooses, for 6 or 7 cents a pound, and the customer, as the master painters have said here, can not tell the difference until three years later when he finds that he was defrauded. He needs that label. As Mr. Dewar, of the master painters said, we sell 100,000,000 gallons of paint each year, worth over \$100,000,000. The short weight and short measure, outside of this question of the

value of the stuff in it, amounts to about fifteen millions of dollars a year that is taken out of the buyers of the United States. The amount of money that is represented by the customer thinking that he is getting a better material than he is getting far exceeds fifteen million dollars a year. In any other business than that of paint, I would say that you have got to leave the American citizen to his own judgment. But you put it in a sealed package, and he can not exercise any judgment. He can not hire a chemist to find out what is in that package after he opens it. It is a purely technical thing. Force the manufacturer to put on the package the essential formula and analysis of that material.

Mr. RICHARDSON. Did you hear what these gentlemen said, that varnish can not be analyzed?

Mr. PERRY. I absolutely know that. The Dalzell bill does not require varnish to be analyzed.

The CHAIRMAN. Your ten minutes has expired.

Mr. PERRY. Thank you, gentlemen.

#### STATEMENT OF MR. JEROME W. FRANK, OF NEW YORK.

Mr. FRANK. I have been brought into this controversy of the varnish experts, and I would say that I have had about twenty years' experience in a varnish factory, where I have given all my time and my knowledge and my study on these matters, and, with almost everybody who is familiar with the industry as a chemist or a practical man, I indorse the statement of Doctor Toch that it is absolutely impossible to analyze a varnish; so that if Clause B is passed you would require us to do an impossible thing. I would like to take you through a varnish factory and point out the changes that take place in the material. You take 125 pounds of fossil gum. That is a chemical composition, so that if you take one small piece of it and cut it in four parts you get four results. You put that 125 pounds of fossil gum in your kettle and fuse it, and then it is all one. Then you take oil and add it to the gum, and in the process of the boiling of the oil the chemical constitution of that is changed. Now, you have two articles whose chemical constitution is changed, neither of them capable or possible of analysis. By their mixture you get as a result a third product unlike either of the products that went into it. Now, what that third product is they do not know, whether it is a physical mixture or a chemical composition or body. The heat is run up to 160°, which causes indeterminable changes. Then the kettle is drawn down to 140° or 150°, and turpentine is added. Benzine often is added, and that being more volatile, there is an indeterminable quantity of evaporation, which is controlled by atmospheric conditions, which also enter very largely into the manufacture of varnish. Then this material, containing dirt and oil and turpentine and dryers, is passed through a filter press, where there is a further loss of all of the mineral matter and some of the combined organic matter, and there is some further evaporation. Then it goes into a tank for storage purposes and aging. As that can not be hermetically sealed, there is a further evaporation there. Thus you get an entirely different product, when the material is finished, from the materials which were used in the original making of the gum.

Now, all men who work in varnishes know that to attempt an analysis of varnish is out of the question. About a year ago the National Association of Varnish Manufacturers determined to send samples of varnishes made up on formulas which were to be sent to the secretary of the association, and these samples were to be submitted to three chemists not directly interested in the industry, but chemists having a national reputation as knowing oils and varnishes, who stand very high in the profession as organic chemists, gentlemen who have had a great deal of experience in formulating varnishes, and these samples were sent to them, and I submit as an exhibit their reports. You will find that none of them agree; none of them come anywhere within a rational limit of the exact proportions of the ingredients. Many of them find materials which never entered into the varnish, and others do not find materials which ought to have been there. I think this will be conclusive as to the impossibility of analyzing a varnish.

Mr. BARTLETT. What proportion of the material is it that you speak of as being lost?

Mr. FRANK. That varies with the melt of the gum and the treatment of the oil.

Mr. BARTLETT. There is no average?

Mr. FRANK. There is no average. I have tried since last August to get an average of our grades. A certain number of trials will show a certain average, and three days later, under different weather conditions, the same number of tests will show an entirely different result, higher or lower.

#### STATEMENT OF MR. SIGMUND ZEISLER, OF CHICAGO, ILL.

Mr. ZEISLER. Mr. Chairman and gentlemen, the objection to the Marshall bill, so far as the technical features are concerned, has been very fully gone into. I desire to call your attention to just two points, which will make perhaps more clear than it has been made heretofore that these objections actually exist under the language of the bill as it is submitted to you. Mr. Marshall this morning disclaimed any intention for his bill to provide a standard of pure paint. He informed you that all that his bill was intended to cover was a requirement of honest labeling. Professor Ladd made the same disclaimer. Professor Ladd stated in plain terms that as he interpreted the bill it was not intended to prevent the sale of any kind of paint, no matter how inferior the ingredients which may have gone into the paint. Permit me to point out to you that no matter what Professor Ladd's interpretation of this bill may be, no matter what Mr. Marshall's intention may have been, the act plainly would make a criminal out of a man who used in his paint any article which might be described as of inferior quality. There is no dispute among men who understand the subject that there are articles of superior quality and there are articles of inferior quality that enter into paints. I am not going to go into a learned disquisition on the subject, so as to show you that sometimes the article which might be called the inferior article is the only article that under the circumstances can be used, and that the superior article can not be used. For instance, you can not use white lead in dark-colored paints, and you must use in those shades of paints barytes or

some of the other pigments that by Professor Ladd would be called inferior articles.

I say I will not go into that discussion, but I will simply state that as a matter of fact there were certain articles which might be agreed upon which would be called inferior. To give an illustration, it might be claimed that benzine is inferior to turpentine, but at the same time there are certain paints in which by reason of the cheapness, and by reason of the fact that the purchaser can not afford a better article, it would be perfectly proper that a part of the fluid turpentine should have substituted for it the inferior article, benzine. However, it has been disclaimed here that there is any intention to prevent any such article from being sold. There is a special provision here requiring a label upon each package of paint, and requiring what that label shall show. You find in section 8 the following language:

SEC. 8. That there shall be shown clearly and distinctly upon the face of the label and in the English language—

(a) The name and residence of the manufacturer of the paint, or of the distributor thereof, or of the party for whom the same is manufactured.

(b) There shall be shown in case of dry colors, colors ground in oil, paste or semi-paste paint the true net weight, and in all ready-mixed or ready-for-use paints the true measure in gallons or part thereof.

(c) There shall be shown the name and, with substantial accuracy, the percentage of each ingredient, both solid and liquid, contained therein.

It is made punishable by very severe fine and imprisonment to mislabel and misbrand, to make any false claim upon the label or to omit from the label a statement of every ingredient that is present. If that is so, what is the purpose of section 7 of the act? Section 7 reads:

SEC. 7. That for the purpose of this act an article shall be deemed to be adulterated—

(a) If any substance be present, other than those mentioned on the label, which cheapens or debases its character or increases its weight or volume without a corresponding increase in value.

This paragraph (a) of section 7 is without any purpose, and it is absolutely meaningless in my opinion, because it does not provide for anything more than that every ingredient shall be named; absolutely nothing else. Then comes paragraph (b) of section 7 which reads:

If any of the materials contained in the article be of inferior quality.

Not of quality inferior to what is claimed on the label; the bill does not so read.

Mr. RICHARDSON. Suppose the bill was amended by the addition there of the words "to that claimed on the label."

Mr. ZEISLER. Then, speaking for the Paint Manufacturers' Association of the United States, I would say we would have no objection. But you can read that section 7 from the beginning to the end and from the end to the beginning backward again, and you will not find any one single word that is claimed to be intended for anything except to prevent dishonest or false labeling. That is what these gentlemen claim. But Mr. Ladd may so interpret it, Doctor Wiley may so interpret it, Mr. Walker may tell us that he so interprets it, all living men who have to do with the interpretation of the law at the present day may tell us that they so interpret it, but this is a government of law and not a government of men, and I do not think we should be compelled to rely upon the interpretation of the present generation of chemists, and we ought to look upon this law in the light

of what the courts will do with it when it gets before them, and there is not a court in Christendom that will not say that this language means that a man is a criminal if he sells paint that contains an article of inferior quality.

Just one other point. To what extent is varnish covered by this law? You gentlemen have heard that it is utterly impossible to make an analysis of varnish, from the mere fact that no matter what you put into varnish, what comes out of it, as the result of the high degree of heat to which the articles used in the manufacture of varnish are subjected, is something entirely different; the articles undergo chemical changes and there are chemical changes going on after the article is manufactured, and there is evaporation, and so forth and so on. Assuming that varnish can not be analyzed, where are the conditions here that make varnish subject to a great danger from this bill? In the first place, section 6 of the Marshall bill reads:

Sec. 6. The term "paint" as used in this act shall include all pigments, dry or in any kind of oil, or any substance or compound used or intended for use in paint, paste or semipaste paint, and liquid or mixed paint ready for use.

That means, as I read it and as I fear the courts would read it, any substance which is useable in paint, which is customarily used in paint. Now, varnish is used in a great many varieties of paint. It is used in all enamel paints. Therefore varnish would have to be used, and no matter whether it is intended for paint or whether it is intended to be applied by a cabinetmaker in polishing a piece of fine furniture, it has got to be labeled. You impose an impossible condition upon the varnish manufacturing trade. The provision about varnish is further covered by section 8, paragraph b, which further provides:

(b) There shall be shown in case of dry colors, colors ground in oil, paste or semi-paste paint the true net weight, and in all ready-mixed or ready-for-use paints the true measure in gallons or part thereof.

(c) There shall be shown the name and, with substantial accuracy, the percentage of each ingredient, both solid and liquid, contained therein.

(d) When other than chemically pure colors are used the percentage composition thereof shall also be shown, or when varnish, japan, or other driers are used.

That would mean that the paint manufacturer, who has not even made the varnish, but who gets a shipment of varnish from the varnish manufacturer, would be subjected to the necessity of making an analysis which the furniture manufacturer himself can not make. He would have to employ the greatest experts in chemistry, and they could not give reliable analyses, and still you would make him a criminal if he did not upon the label of his paint show the analysis of the varnish. When it comes to japan driers, all that needs to be said is that japan driers do contain varnish. Therefore it is just as impossible to make a correct analysis of japan driers as it is to make an analysis of varnish. As has been said here, and in my opinion truthfully said, the provision requiring analyses of varnish is an invitation to the perpetration of fraud. There are some substances which go into a varnish which perhaps are not the very best substances to be used in varnish. It is and would be very simple for a dishonest man to simply copy the label of the manufacturer who makes the highest class varnish, whose varnish has the greatest reputation. He would make the broadest kind of claim, and there is no possibility of disproving his claim, broadly speaking; there may be in some minor details, but not generally speaking.



**STATEMENT OF MR. ORISON B. SMITH, OF J. LEE SMITH & CO.**

Mr. SMITH. I am neither a white-lead manufacturer nor a mixed-paint manufacturer. Put that down. I never ground a pound of mixed paint in my life. I sell dry colors to the paint manufacturers. I am here as their Moses, to lead them out of the wilderness of this woe-ful legislation that threatens them. I appear here first for myself, Orison B. Smith, and here beside me is my son, of the same name. I appear for myself, I appear for the Eastern Paint Manufacturers' Association which comprises the States of Maine, Massachusetts, Connecticut, New York, Ohio, Pennsylvania, and the District of Columbia, where we stand now, and Maryland and Delaware; and I want to tell you that this speech will go to every hamlet in this broad country wherever the mail can carry it, and the message will go to every little painter as well as to the richest man in our organization, to-night, that I have come here. My name is Orison, and you gentlemen know that Orison means a morning prayer, and my son stands here as another, and we offer this prayer to this committee, and we offer this prayer to the House of Representatives, and notwithstanding that we feel that this bill will never go out of this committee, yet we want this prayer to go to the House of Representatives, to the Senate, to President Roosevelt. I appear here at the risk of my life to-day, but I will dedicate my life this afternoon—I am 60 years of age, and according to Scripture I have but ten years more to live—and if God sees fit to strike me dead before I finish I will leave this legacy to my son, that he shall work for the liberties of the paint trade which has supported me and which has supported him and I hope will support his children.

I have listened to all this talk, and I look around and I see these gentlemen, and I want them to look at me. One of them has just passed out, and as he went I said: "Peters, won't you stop and listen to my speech? I am going to bury the white-lead people." He said: "No; I am in a hurry." I said: "Well, you will read it some day," and it was suggested to me, as he went out of the room, whether he had been eating a little white lead and had gotten the colic and was feeling badly.

I shall speak first as a member of the Eastern Paint Manufacturers' Association, and that association was organized but a month ago to embrace the New England States, and the principle for which is was organized is the same principle, gentlemen, that actuated those patriots of 1776 when, for an injustice like that which I am here to protest against, they threw overboard the tea rather than do what they considered was not the part of American citizens to submit to.

I shall first, before I go further, if you will allow me, answer just a few of the questions that have been asked, and the first one that I will answer will be that of this gentleman; I wish I knew his name (indicating Mr. Richardson).

Mr. RICHARDSON. My name is Mr. Richardson, from Alabama.

Mr. SMITH. Richardson, of Alabama. I saw in every question that he asked that he was not one of our legislators that come here to dream of expenses at home, but that he was looking into this condition that this committee has met. (Laughter.)

Mr. RICHARDSON. General, I am very much obliged to you.

Mr. SMITH. I think it is the tribute of an honest man, as I thank God I am. I doubt if there is a man here connected with paint

that has not heard of the firm of J. Lee Smith & Co. If there is, I would like him to stand up so that you may see him, as a curiosity. I do not come here, gentlemen, with any constituency behind me. May I ask, violating no confidence of the first vice-president of the white lead company sitting by that door, that he rise and tell what I said to him a few moments ago? You will not? Then I will tell it myself. I said to him: "Lawrence, I hate to bury you to-day, but I am going to make a speech that will do it, and I am sorry, because you are an orator. And at the last meeting I had with you in the office of the white lead company I told you I was going to make that speech; and what did you say to me, Lawrence? Will you stand up and say it? Then I will say it for you. You said, "Then, Smith, why don't you burn the speech? Who wants you to give it?" And I said, "I can not do that, as an honest man." I would not burn my speech to-day, not if you put \$1,000,000 of gold on that table, because I am here to win this fight, that we shall have no legislation that will brand any member of the paint trade of the United States as less honest than people in any other business. He says: "Who do you represent?" I said: "I represent principally the paint army of the United States, whose countersign is, to every man that comes into it, that thanks to Mr. Marshall we have struck that vulnerable part in his bill, that weak spot in the heel of Achilles; for there is no bill, there is no animal so strong, even the Republican elephant or the Democratic donkey, but has a vulnerable part, and your vulnerable part—shall I read it to you, Mr. Marshall, the vulnerable part? I had it by heart as I studied at it 3 o'clock in the morning two weeks ago when I conceived this idea that I would down this legislation in the Congress of this country, that I would prevent any State in the Union from passing any bill for the sale of paint that gave us less liberty than any other association of merchants, I do not care how less weak and miserable than the paint trade of the United States; and I saw your vulnerable part.

Let me explain it. This is the legislation that we are here to consider. Take any manufacturer like myself who has a factory that ships 200 barrels, as I often do, in a day. I ship dry paints to protect the houses of the poor people down there in your district in Alabama, Mr. Richardson, from the rain coming in in summer and the snow coming in in winter, and also I import from foreign countries many, many thousand—18,000 or 25,000—barrels of that sort of stuff; and if one of my employees in the factory, thinking of his home and his dinner, thinking of his full wages—I have kept my factory running every day all through this panic out of mercy—should neglect to put a damned, mean, miserable label on those 200 barrels of paint, or if that miserable man, an idiot that had just come into the works and very likely would leave the next day, as often happens, should be put on that, and you told this man, possibly an Italian who could not speak English, before these barrels were shipped, "Take these labels and put them on the barrels," and he neglected to do so, what would be the consequences, Mr. Marshall? As I told you, what I am going to say about your bill is to kill it dead. Whatever I have said to you is in the position in which you come here. There is nothing personal, Mr. Marshall, in what I say. There is nothing personal, Mr. Ladd, in what I will say. There is nothing personal to you, Doctor Wiley, in what I will say, or in what I will say to you, honored chairman, of the committee;

but I do claim the right to say what I think as an American citizen, and I will call an ace an ace, and that is what I am here for. Suppose under those circumstances those 200 barrels are shipped through every State of the nation and are seized as they are, one or two here or there, by these poor fry of deputy inspectors that are looking to hold down their jobs, what is the consequence to me and what is the consequence to my son, in Heaven's name? The consequence is that I and my father and my grandfather, who have been honored merchants in New York for one hundred and fifty years—and I will guarantee that I have paid more money in duties to the United States Government for its support and defense against its enemies, and that I have held one of the highest positions in one of the churches in my city—that you, Mr. Marshall, come with that miserable, bastard, damnable bill—

Mr. SHERMAN. You will have to omit that sort of language.

Mr. SMITH. Bringing me—

Mr. SHERMAN. If you want to discuss this bill, get down to it, and stop your personalities, or we will adjourn this committee.

Mr. SMITH. If I am curtailed the right of speech, very well.

Mr. SHERMAN. If there is anything you want to say about the bill, say it. Leave out the personalities. Discuss the bill; that is all we care about.

Mr. SMITH. I referred to that for the reason—

Mr. SHERMAN. Never mind what you referred to it for.

Mr. SMITH. Very well. Under those conditions I would be fined \$300 for a single offense on paint that is worth \$1,000, and I would go to jail and rot in jail for one year, and be branded as a jail bird and have that descend to my children, simply for what? Simply this, "Because there was no label he died in jail." And my descendants and friends and acquaintances have that, if you say so.

This gentleman from Alabama very wisely saw that not everybody could use good paint; that they must have cheaper paint. Allow me to read from a bulletin that the paint army of the United States will file, and which will be out perhaps in two weeks. This is entitled "Because there was no label he went to jail," and each Member of Congress and each Senator, and the President of the United States, and each legislator of the 42 States of the United States, will have a copy, and I pray God he will have a thousand copies before he votes to place an honest man in jail. This letter takes all the situations that may come up in a man's business; presumably, after the passage of the Marshall bill. This paint maker, this honored good man, is sitting worried to death, and his stenographer, Miss Fluffy Ruffles—you know her, of the New York Herald—says: "Here is another letter." "Well, well; I am listening." [Reads:]

Mr. HONEST GOODMAN:

DEAR SIR: We have read your circular about the advantage of using pure white lead and zinc paints that cost \$1.25 per gallon. Do you think we are millionaires down here in Starvation City, Okla.? You rich fellows East and West can afford it. We can not afford such luxuries.

(Mr. Smith continued reading from the document referred to.)

Mr. SMITH. Now, if Professor Ladd is here, he can hear the Professor talk as a student of economics—he will hear him talk as a professor and as a scientific man, and a chemist connected with the paint trade—and if you will allow me, I will refer to it later.

Mr. SHERMAN. Proceed.

Mr. SMITH. "Because there was no label he died in jail." There never will be a speech in the United States that more people will read—

Mr. SHERMAN. Had you not better confine yourself to arguments about the bill? It seems to me you have indulged in about fifteen minutes of rot, which is about all this committee ought to listen to, and if you have anything else in the way of an argument to make about the bill, suppose you make it.

Mr. SMITH. Then I will leave this. Then I will come down in this to the funeral, if you will allow me to say so to you, of the white lead manufacturers and painters' associations. There is one inquiry that is perhaps in more minds than any other, and which perhaps comes up more than any other. You are asked, "Why does your association object to any bill that says you must put on the package if it is impure." This, from which I have just read to you, will explain it when you get it. But I must confine myself to the Marshall bill, and I will say, why does this Marshall bill or why does the other bill have the indorsement of the Paint Manufacturers' Association of the United States, the National Paint, Oil, and Varnish Association, and the International Association of Master House Painters and Decorators of the United States and Canada. To answer that question, gentlemen, as an honest man should, is a difficult task, and if you will pardon me, with the strength that in the past two weeks has been so severely called upon, I will endeavor to convict them out of their own minds. But, Mr. Chairman and gentlemen of the committee, I claim the right of an American citizen, as standing here, that I may speak at least as God puts the words, in my poor ability, in my mind, and that I may not be cramped and cut off in any effort that my feelings may lead me to. I will therefore crave your indulgence, and get down to business.

First I am going to convict the white lead people; I am going to convict the Master Painters' Association; I am going to bury them, if you will allow me the expression, and I am going to tell you first of all why the other associations of paint manufacturers of the United States, the National Paint, Oil, and Varnish Association, and the International Association of Master Painters and Decorators, all of whom you have heard from to-day, indorse this model bill passed for the States, and this Marshall bill, as most of them do. It is simply this, that for the past two years, ever since the law in Dakota was enacted, these associations and these members have been almost terrified. I want to call your attention to Professor Ladd's No. 4 circular, issued in March. With all these matters that are threatening, they fear that they will not be able to sleep at night or have time to speak to their children, which every God-fearing citizen has a right to do at night when he goes home, but they must be worrying about the subject of the package and what they shall put upon it. Therefore this has brought around among them a state of panic, and they formed one association, as you see, and another association, and another one, and at last, here a month ago, the associations for which I am now speaking. Then comes along this Master Painters' Association, and they have their convention in New Orleans in February, and then we have delegates from all these other big associations and

they put their heads together and they concoct this bill, along with the white lead people—that is, the white lead people concoct it, as I understand, in conjunction—and indorse it, which I will prove by words written in this pamphlet which I hold up, which the National Lead Company issued, which undoubtedly shows that it is true. This arrangement—I wish you would allow me to use a stronger expression—shows why the master painters and the lead people go hand in hand, and, as I say, last night they held conference together. I am going to read from this little pamphlet, called "The Dutch Boy," issued by the National Lead Company. This is volume 1, No. 2, and it has on the cover "Convention number, 1908." I read now from the second paragraph on page 32, and I would like to ask Doctor Thompson if he wrote that. He was here this morning.

Mr. SHERMAN. No difference about who wrote it.

Mr. SMITH. Simply, he could confirm it. The National Lead Company prints this. This reads:

Therefore the painters want an honest label law of national scope—

I believe that refers to this bill—

and the justice of the demand is so apparent that it does not seem possible that Congress can refuse their request.

Now, with reference to this bill—and that I make as a point of order, that it is with reference to the Marshall bill—I say that the Master Painters' Association and the white lead people and this association here have agreed to support this bill, and I want to show its fallacy.

Mr. SHERMAN. Suppose they have agreed to support it; they have a right to agree to support the bill, and you have a right to oppose it; and if you want to oppose it, proceed to do so, and leave out these personalities. We do not care anything about having you criticise people that favor this bill, but if you have any real argument to advance why this bill should not be reported by this committee, we want you to advance it.

Mr. BARTLETT. I do not know what he is going to read, but it occurs to me if he can show that the bill is not really in the interest of the people, to keep people from being imposed on, but he is going to show that this is being done by a combination of people who themselves are to be benefited at the expense of other corporations, and it is not the great public that they are trying to protect, but it is for private interests, it is perfectly proper. I do not know whether that is true or not.

Mr. SMITH. That is the fact.

Mr. SHERMAN. We should confine ourselves to the bill and to questions as to why it should be turned down or as to why it should be reported.

Mr. SMITH. This is cognate entirely to the question why the Eastern Paint Manufacturers' Association of the United States want to show you why this bill which is here which requires the labeling of pure paint and adulterated paint is here, why that is in this bill to the detriment of the public, and how it is intended to cheat the public—"cheat them" I say advisedly—by an association that is held responsible by the Eastern Paint Manufacturers and the entire association of manufacturers in the United States. Gentlemen, is that correct?

Mr. McCafferty. That is correct.

Mr. Smith. May I read it?

Mr. Sherman. Go on and read it.

Mr. Smith (reading):

As it was expressed by one speaker, the painter knows by experience, and therefore knows better than anyone else, how this paint should be mixed and of what it should be composed. If he knows that he wants some zinc, conditions should be left so that he can buy pure zinc as he needs it; if he wants barytes, he should be allowed to buy it ground separately, so that he may use just as much as he may desire and no more.

Is that cognate to this subject? According to this bill they come here and say: "You paint manufacturers must grind pure paint and give it to the painter, according to the law, and the bill authorizes that the painter shall be allowed to buy his barytes pure, and, as it is here stated, 'use just as much as he may desire and no more.'" This asks Congress to pass a law which says this, that the painter must receive it pure and he can adulterate it. Now, I claim the right, Mr. Chairman, as an American citizen, to speak just as this matter appeals to me and to every fair-minded man. I want to show this committee what this is. The painters come here and say, "We are the only honest men." Why do they want to buy barytes and put it in the paint? I will take any 12 men from this room, Mr. Chairman, you included as the foreman, and I will say to them: "Why does the painter want to put barytes in the paint, and why does he say that?" He must be allowed to put it on the job.

There is never a package of white lead—and this is the point I want to make—or of any other kind of paint, that ever did anybody any harm until it was opened and painted onto a house, or a barn, or a fence, or whatever it was put on. As long as the paint is in the package it is perfectly harmless. These men come here—excuse the personality—with a check as large as the Gulf of Mexico, and say "We must have our paint pure, but I want you gentlemen to pass a law that into the paint I may put just as much white lead and just as much barytes as I may desire." That is really the point of the case. I am sorry to see that our friends are leaving so soon; I would like them to hear me. That is the point of the whole business. You say to the painter "I want my house painted," and he comes in and says—this is the effect of this to the Eastern Paint Manufacturers that I represent as the major-general of the army of the painters—and they will be heard from later—"Give us the lead pure, and let us be the only ones to cheat."

How is this received by the Master Painters' Association? Is Mr. Dewar here? This little pamphlet says:

The hearty applause with which this explanation of the situation was greeted foretold the way the vote would go. The painters decided to keep the mixing and tinting of their paints in their own hands and refused to indorse the "composite base" plan.

There is another matter which has been spoken of so much here that I ask the privilege as an American citizen of reading one article here as to adulteration.

Mr. Sherman. We will give you five minutes more. The House has adjourned and we ought to adjourn, but you may have five minutes, and you may occupy that time as you see fit.

Mr. SMITH. I read from a conference with the National Lead Company which was held to ask them kindly to withdraw their amendments offered in several States, and I am happy to say that although they refused, and they refused it to the Master Painters, they granted it to this committee. It reads as follows:

#### ADULTERATION.

The Standard Dictionary gives the meaning of this word as follows: "The act of adulterating or corrupting by the admixture of foreign and baser elements, especially for fraudulent purposes."

In the popular mind the idea of paint or colors being mixed with any cheaper material, such as barytes, gypsum, whiting, starch, or other well-known and inert materials, is associated with adulteration with the intent to cheat or deceive. That this common understanding in most cases is not usually a just one may be illustrated by the following: A majority of the colors used in tinting house paints, like Prussian blue, chrome yellow, and similar colors, are far too expensive to be used for many purposes for which in their reduced state, by the addition of some cheapening material, they are available. It is also true that many such pigments have in themselves an unnecessary amount of covering property and tinting strength when used alone, and at the price at which they are sold the quantity would cover such a small surface as to prohibit their use except in very small quantities. Where, however, such colors can be reduced in cost to the consumer by the addition of some inert material, like those mentioned above, the consumer is enabled to obtain the beauty of color and a satisfactory opacity and other properties at a cost which for the pure material he could not afford. For instance, the article of Venetian red, which, under that name and as a bright paint of cheap price, has been known as long, perhaps, as any paint in the market, and possibly for the last thousand years has been used with generally satisfactory results, is made by mixing a small quantity of bright, expensive oxide of iron with a large quantity of some inert material. The consumer who wishes a red paint at a cheap cost knows Venetian red under its name and buys it freely, and the result is that his house is painted with a bright color at a cheap cost, which, in most cases, if he were obliged to buy the pure oxide of iron, he possibly and generally could not afford to do.

Another illustration on this idea would be chrome yellow, costing in the pure state to the manufacturer about 13 cents a pound, and is retailed in the neighborhood of 20 cents. If the consumer for house painting, agricultural implements, and various other purposes, wants a yellow of a bright color, he can not find it in any of the natural ochers, or any yellow found in nature, and he can not afford to use the chemically pure chrome yellow, for the same reason as that which prevails in the case of the blues and the greens. Therefore, the bright yellow color is produced for him by the paint grinders by a mixture of natural ocher, chemically pure chrome yellow, and inert material. The result is a color almost as brilliant as chrome yellow, of good and sufficient opacity, very durable, and generally satisfactory. It would therefore seem that the condition of what is generally considered adulteration is not fair to the paint grinder, but in reality is a condition that by reducing the cost of the expensive materials the consumer can have the benefit of the beauty and brilliancy of very expensive colors.

That is one argument which will be in this document which you will receive. Now, I have not got half through, but you will not allow me to speak further, and I will simply say this, that what I have to say upon the arguments and conditions of the paint army of America will be delivered next Saturday, God willing, and I will see that every member of this committee and every member of the House of Representatives and of the Senate, and President Roosevelt, shall have a copy, and I shall get it before the people in every hamlet in this nation. I regret that I have been so curtailed that I have not been able to get in anything about this army. What I have said, and what I shall hand you further, I commend to your attention.

(At 5 o'clock p. m. the committee adjourned.)

NORTH DAKOTA RETAIL HARDWARE ASSOCIATION,  
*Grand Forks, N. Dak., March 3, 1908.*

CHAIRMAN ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE,  
*Washington, D. C.*

DEAR SIR: At the last annual meeting of this association, which was held about thirty days ago, the association adopted unanimously the following resolution:

"Whereas our Representative in Congress, Thomas F. Marshall, has introduced a bill in Congress for a national paint law.

"Resolved, That we heartily indorse and favor the passage of such a bill and that a copy of this be sent to each Member of Congress from North Dakota and that they each be asked to work for the passage of such a bill at this session of Congress."

It is needless for us to say that the hardware merchants of North Dakota are very much interested and are anxious to have a national paint law passed of the character outlined in Congressman Marshall's proposed bill, and only hope that you can see your way clear to report favorably on this bill.

Yours, very truly,

NORTH DAKOTA RETAIL HARDWARE ASSN.,  
C. N. BARNES, *Secretary.*

AVERILL PAINT COMPANY,  
*Brooklyn, N. Y., April 4, 1908.*

HON. WILLIAM P. HEPBURN  
*Chairman Committee on Interstate and Foreign Commerce,*  
*Washington, D. C.*

DEAR SIR: We desire to enter our protest against your committee's reporting favorably upon the Marshall bill, regulating the trafficking in paints.

The manufacturer of paints does not want legislation any more than a cat wants kittens. What is really needed at this particular time is rest, peace, and reassurance, and the enactment of this measure will mean just the reverse.

To live up to the requirements of the Marshall bill, the small struggling manufacturer like myself will require the constant services of a chemist, and this is entirely out of the question. Even where a chemist is employed the requirements are still impracticable, and the manufacturer is liable to heavy fines through the carelessness of employees. The competition in our trade is such that the consumer of paints gets his money's worth, and on his part there is no demand whatever for legislation.

We sincerely hope you will give favorable consideration to this and the further protests from other paint manufacturers.

Yours, truly,

AVERILL PAINT CO.,  
HENRY J. BRIERLEY.

THE S. P. WETHERILL COMPANY,  
*Philadelphia, April 13, 1908.*

THE CHAIRMAN OF THE  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

DEAR SIR: We find in the Oil, Paint, and Drug Reporter of New York (issue of this date, p. 9), there is set forth what purports to be a verbatim report of a hearing on the "Marshall honest paint bill" before your committee on the 7th instant.

We were led to believe that the promoters of this measure would eliminate dry pigments entirely from the bill. We regret exceedingly to learn that first consideration is given to the subject of dry pigments, or the bases before they are mixed with oil, turpentine, benzine, varnish, etc.

Kindly permit us to say that we feel the arguments in favor of legislation for regulating the sale of paints in oil do not apply in any sense to dry paints. These materials are sold by sample, passing by hand from seller to buyer, or through the mails, express, etc.

A review of the proceedings impresses us with the fact that no consideration whatever was given to what is known in the trade as the business of dry paints; and particularly those which are obtained from the earth. These afford a means of livelihood to many hundreds of persons scattered all over our country.



We refer particularly to materials known as yellow, red, and gray ochers, umbers, siennas, Spanish and metallic brown, and iron ores commonly known as Venetian red. No two shipments of these materials would give identical analyses, and it would be a matter of utter impossibility to brand the packages accurately.

Should the bill be passed as now worded, we predict the result will be that they will be eliminated from paint in oil entirely (chemical productions taking their place), and a source of revenue taken from those who now earn a living by mining the minerals.

At a time when almost every article of commerce is in the hands of great corporations or so-called "trusts," it strikes us as being a serious matter to deprive anyone of that which might prove an honorable means of livelihood.

It should be kept in mind that these minerals are gotten from the earth by farmers and miners at seasons when they are otherwise unemployed.

They are not often over 30 per cent oxide of iron (coloring property contained), the balance being made up of clay, silica, etc. When properly prepared they make good paints, which can be sold at reasonable prices, and are in no sense an injury to anyone, but, as we will try to explain, quite the reverse.

For instance, we make for hardware dealers in this neighborhood (who sell in the dry condition only to householders and farmers) Venetian red, which contains 6 per cent oxide of iron and 94 per cent of clay, silica, etc. It is of good color, and is sought by the farmer to paint his barns, fences, etc. As the entire mixture is finely ground, the particles, when carefully applied with the brush, sink into the interstices of the wood or metal and prevent moisture from entering the almost microscopic openings, with the result, if the oil is good and the work well done, of warding off decay. Preventing decay is the primal object of painting, and as the materials noted above are inert they are naturally adapted to this purpose, which chemical pigments many times are not.

In this connection kindly permit us to quote from the best authority we know on this subject—Mr. Robert Job, formerly chief chemist of the Philadelphia and Reading Railroad. This article, taken from the *Scientific American* and reprinted in *Drugs, Oils and Paints* (July, 1906), contains, amongst other things, the following:

"The deductions from this study were very clear and have been borne out by subsequent experience.

"It was evident that durability did not bear any relation to the cost of the paint, since one of our cheapest paints had proved the most lasting and gave the best protection; or, in other words, a paint containing only 23 per cent of sesquioxide of iron, with the remainder largely clay, gave far more efficient service under the same general conditions than paints of much higher first cost. It is perfectly possible to have an exceedingly durable pigment composed, we will say, of sesquioxide of iron 100 per cent pure, but in such case the durability would be due to the physical condition of the pigment and not to the fact that a high proportion of iron was present; for pigment of identically the same composition—that is, 100 per cent pure, but coarsely ground—would be found to have little protective value, and this entirely apart from any chemical reaction between pigment and oil."

If a drastic analyses law is enacted to include dry pigments, the only recourse for the dry paint manufacturer is to adopt chemicals exclusively, which can be made pure, and then adulterate to the quality to suit the purpose for which they may be intended.

Should you desire, we will hold ourselves in readiness to review this most important subject in person, and trusting our plea will have your valued consideration and the bill so amended as to eliminate dry paints, we are,

Yours, very truly,

THE S. P. WETHERILL COMPANY,  
HENRY C. STEWART, *Treasurer*.

LONGMAN & MARTINEZ, PAINT MAKERS,  
*New York, April 20, 1908.*

The CHAIRMAN COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*House of Representatives, Washington, D. C.*

DEAR SIR: Section 3 of the present "Marshall bill" (H. R. 17824) states "That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this act, including provision for fair disposition of stocks on hand at the time this act takes effect."

We protest that this provision is unfair, because it most probably will work injustice to many, if not all, dealers in paints. Evidence of this can be ascertained from dealers in paints, by propounding the inquiry, whether some package paints are carried in stock for one, two, three, or more years before being sold.

A letter to us from Mr. A. O. Hunt, of St. Johns, Mich., dated April 9, states: "Inclosed is order for paint, which, with what I have in stock (200 gallons), will make about 300 gallons."

This mentioned quantity of 200 gallons of our paint, various colors and sizes, cost Mr. Hunt about \$280. Mr. Hunt purchased from us during 1907 \$415 worth of our paints, or only \$135 worth more than the value of his present stock. As we make 48 colors, and also white, and Mr. Hunt, like other dealers, carries quite a number of colors, it is evident that he might have many packages in his stock for several or more years. Under such conditions nothing less than a positive exemption from the provisions of the act can do justice to holders of paint stock bought prior thereto.

We therefore earnestly urge upon this much justice being done to dealers in paints as may be secured by embodying in the "Marshall bill" the exact words of section 13 of the "Dalzell bill," viz., "That the provision of thic act shall not apply to any paint, turpentine, or linseed oil which has been manufactured, produced, or sold prior to the time that this act takes effect."

There is not a manufacturer of paint in the United States who will not join us in earnestly and strongly advocating this fair treatment toward innocent holders of paint stock.

Very respectfully,

LONGMAN & MARTINEZ.

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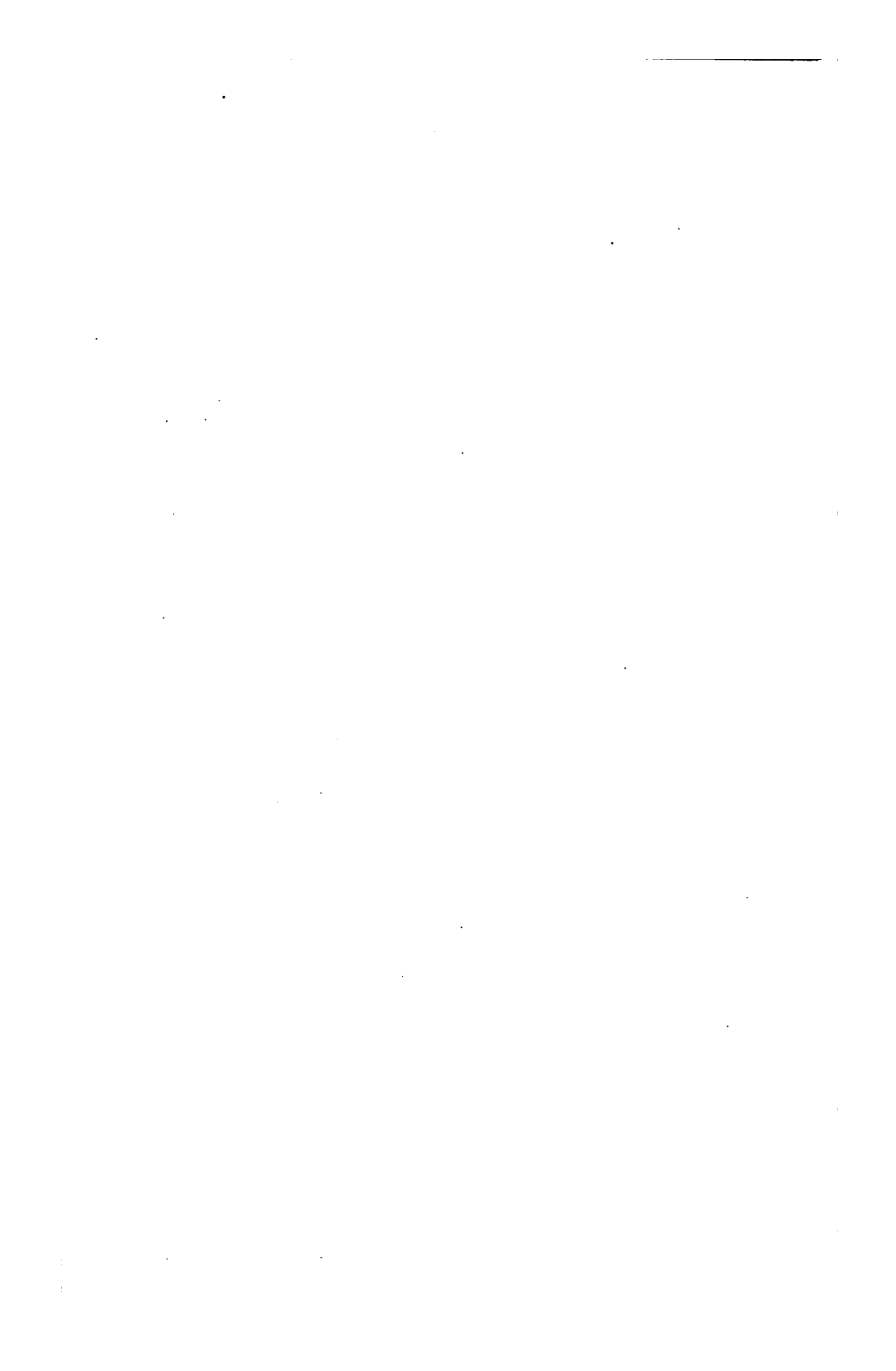


















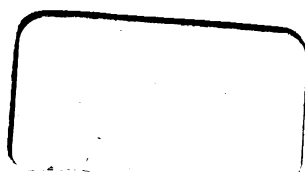














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